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2002 ANNUAL REPORT



OF THE
JOINT COMMITTEE
ON ADMINISTRATIVE
RULES

SUBMITTED TO THE
MEMBERS OF THE
ILLINOIS GENERAL
ASSEMBLY



**2002
ANNUAL REPORT
of the
JOINT COMMITTEE ON
ADMINISTRATIVE RULES**

*Submitted to the Members of the
Illinois General Assembly*

**Senator Barack Obama, Co-Chair
Representative Art Tenhouse, Co-Chair**

**Senator J. Bradley Burzynski
Representative Tom Cross
Representative Steve Davis
Senator Doris Karpel
Senator Lisa Madigan
Representative Phil Novak
Senator William L. O'Daniel
Senator Steve Rauschenberger
Representative Dan Rutherford**

**Vicki Thomas
Executive Director**

**700 Stratton Building
Springfield IL 62706**



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JOINT COMMITTEE ON ADMINISTRATIVE RULES

ILLINOIS GENERAL ASSEMBLY

CO-CHAIR:
SEN. BARACK OBAMA

CO-CHAIR:
REP. ART TENHOUSE

EXECUTIVE DIRECTOR:
VICKI THOMAS



SEN. J. BRADLEY BURZYNSKI
SEN. STEVE RAUSCHENBERGER
SEN. DAN RUTHERFORD
REP. TOM CROSS
REP. STEVE DAVIS
REP. DAVID LEITCH
REP. PHIL NOVAK

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HONORABLE MEMBERS OF THE 93rd GENERAL ASSEMBLY:

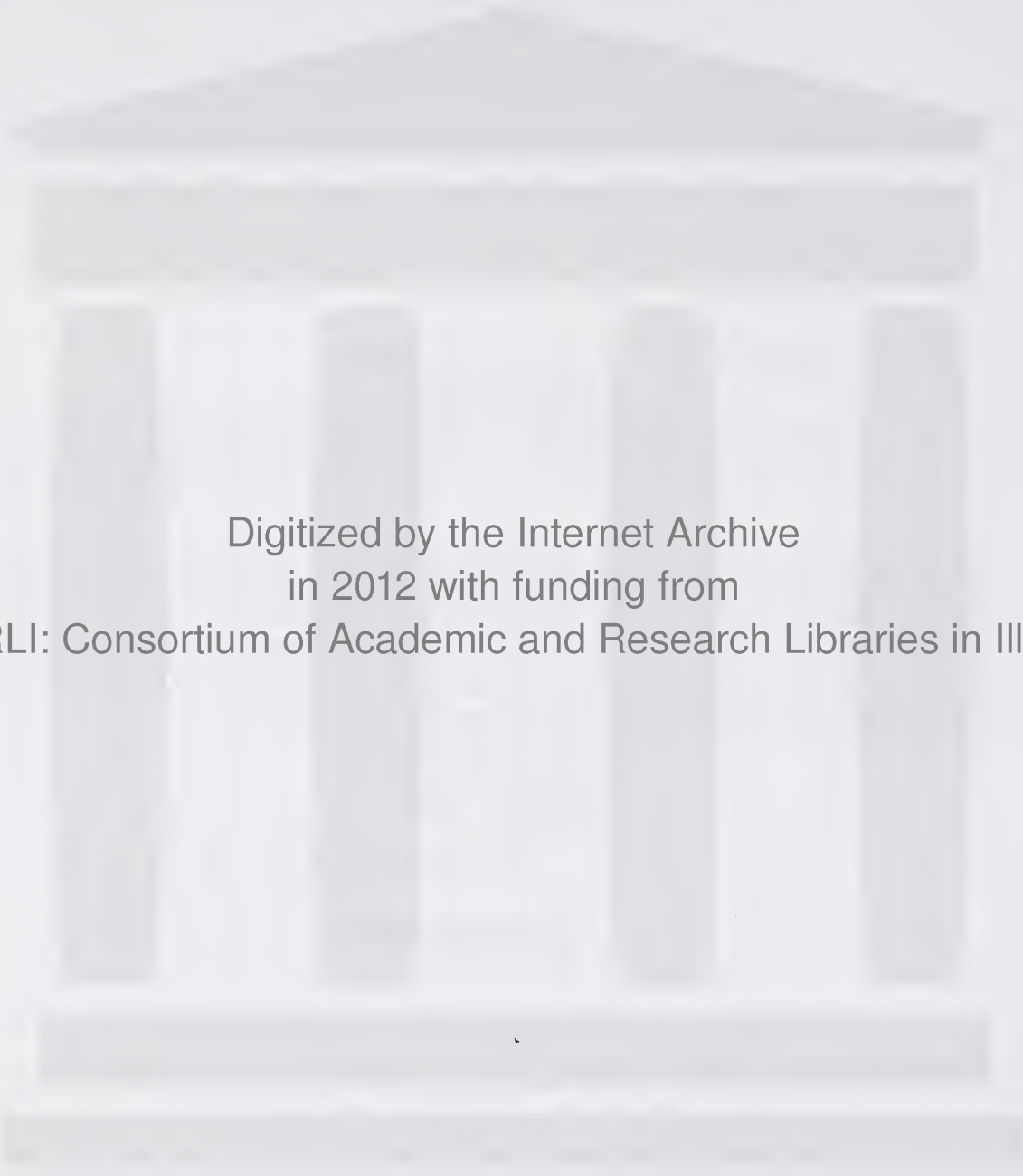
As Chair of the Joint Committee on Administrative Rules, I hereby submit the 2002 Annual Report of that Committee. An overview of the Committee's rules review activities can be found in the following pages.

The Joint Committee on Administrative Rules gratefully acknowledges your continued support and assistance, and we encourage all members of the General Assembly to take an active role in this vital oversight function guaranteeing that the public right to know is protected through the promulgation of specific rules that are applied equally to everyone regulated. We welcome your suggestions and comments on agency rules and the role of the Committee. Only as each elected representative becomes concerned and involved in the oversight process can the Committee ensure that the intent of the legislation we pass is maintained.

Respectfully,

A handwritten signature in black ink, appearing to read "Barack Obama", written over a large, stylized circular flourish.

Senator Barack Obama
Co-Chairman



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JCAR

Annual Report: 2002

Table of Contents

JCAR--Its Creation and Its Purpose	1
JCAR Membership	3
Illinois Rulemaking Process	4

2002

General Rulemaking	9
Table: General Rulemakings Proposed by the Agency	13
Table: General Rulemakings Considered by JCAR	15
Table: General Rulemakings: JCAR Action	17
Table: General Rulemakings: Basis for JCAR Action	18
Emergency Rulemaking	19
Table: Emergency Rulemakings Adopted by the Agency	20
Table: Emergency Rulemakings Considered by JCAR	21
Table: Emergency Rulemakings: JCAR Action	22
Table: Emergency Rulemakings: Basis for JCAR Action	23
Peremptory & Exempt Rulemaking	24
Table: Peremptory & Exempt Rulemakings Adopted by the Agency	25
Table: Peremptory & Exempt Rulemakings Considered by JCAR	26
Table: Peremptory & Exempt Rulemakings: JCAR Action	27
Table: Peremptory & Exempt Rulemakings: Basis for JCAR Action	28
General Objection to DPA Policy	29
Agency Response	30
Table: Agency Response to 2002 JCAR Action	30

Public Act Review	31
Complaint Review	32
Legislative Activity Relating to JCAR and the IAPA	35
Judicial Activity Relating to JCAR and the IAPA	37
Table: Quantitative History of Rulemaking Activity By Agency: 1978-2002	42
The Illinois Administrative Procedure Act	50

JCAR

ITS CREATION AND ITS PURPOSE

CREATION

The Illinois General Assembly created the Joint Committee on Administrative Rules (JCAR) in 1977 and delegated to it the responsibility of the legislative branch to ensure that the laws it enacts are appropriately implemented through administrative law. The specific duties and authorities of JCAR are outlined in the Illinois Administrative Procedure Act (IAPA), as is the Illinois rulemaking process.

RESPONSIBILITIES

The Committee's principal programs and activities include:

- *Review of general rulemaking.* In the course of this review, JCAR seeks to facilitate involvement by the affected public and to make the review process a timely and efficient one that assists State agencies in their goal of enacting the best administrative law possible.
- *Review of emergency and preemptory rulemakings* to ensure that they are justifiable within the IAPA's limitations on these types of rulemakings. Emergency and preemptory rulemakings are not subject to the IAPA's public comment period, and thus should be used conservatively.
- *Review of existing agency rules and policies* to determine if they have been properly promulgated, are unauthorized or unreasonable, or result in serious negative impact on the citizens of this State. These reviews can be undertaken upon JCAR's own initiative or in response to a complaint from the public.
- *Public Act review* to determine the necessity for new or amendatory rulemaking in response to legislative changes. JCAR devises a list of laws it believes may generate rulemaking activity, shares that list with the agencies, and monitors agency activity to determine if appropriate action is taken.
- *Legislative activities.* JCAR reviews any proposed legislation that amends the Illinois Administrative Procedure Act and brings to agencies' attention any resulting changes in rulemaking procedures. Legislation involving issues that have recently come before JCAR is also followed. Under its IAPA mandate to continually seek to improve the rulemaking process, JCAR occasionally initiates legislation revising the IAPA. It also may propose legislation when rules review brings attention to a statutory insufficiency or lack of clarity or to enforce its Objections or Recommendations when an agency has refused to adhere to those Objections or Recommendations.
- *Public information.* JCAR provides information on rules and the rulemaking process to legislators and the public through several conduits. First, JCAR publishes *The Flinn Report: Illinois Regulation*, a free weekly newsletter that summarizes State agency rulemaking activities. The newsletter is used by many as an alternative to subscribing (\$290/yr.) to the *Illinois Register* and is now available on-line, as well as by mail. The newsletter highlights the major issues; the reader can then seek a copy of the specific rulemaking or further in-

formation from the proposing agency. Second, JCAR has created and maintains the *Illinois Administrative Code* database. The database is used in the publishing of the *Code* by the Secretary of State's Index Department and by private publishers who have been licensed to use the database. State agencies can access the database by downloading their Parts for use on their PCs. As of 1/1/03, portions of this database have been accessible on the General Assembly website (www.legis.state.il.us). By mid-2003, all of the Titles of the *Code* should be included on the G.A. website. Third, JCAR staff is always available to respond to inquiries from General Assembly members and the public. (For information, or to be added to the *Flinn Report* mailing list, call 217/785-2254 or contact JCAR by e-mail at jcar@legis.state.il.us.)

THE REVIEW PROCESS ---

The JCAR membership meets at least once each month to consider an agenda that generally includes from 50 to 100 separate rulemakings by State agencies. In a year's time, JCAR will review approximately 20,000 pages of rule. The IAPA dictates that the Committee's analysis of rulemakings be based on such concerns as statutory authority and legislative intent; necessity of the regulation; economic impact on State government and the affected public; completeness and appropriateness of standards to be relied upon in the exercise of agency discretion; effect on local government through the creation of a mandate; adherence to IAPA rulemaking requirements; and form.

JCAR's review of agency regulatory proposals is predominantly substantive. Its major concern is that statutory law is applied fairly and consistently, creating as little paperwork and economic burden for the affected public as possible. The Committee serves as the final avenue for input from the public before a rulemaking is formally adopted. Recommendations from the public are always welcome and are actively sought. The Committee recognizes that no one is as qualified to comment on the appropriateness and practicality of a proposed regulation as the individual whose activities or business practices will be affected by that regulation. Comment on any proposed or existing State regulation may be submitted to the Committee at 700 Stratton Building, Springfield IL 62706, or by calling 217/785-2254.

JCAR's perusal of agency rulemakings serves a technical purpose as well. The various rulemakings of the State agencies collectively comprise the *Illinois Administrative Code*. In giving a final technical review to each agency proposal, JCAR, along with the Secretary of State's Index Department, strives to achieve some degree of consistency among the individual agencies' portions of the *Code*, and to make the *Code* as readable and understandable for the public as possible.

ANNUAL REPORT ---

This Report includes narratives of JCAR activity during 2002, as well as the statistical summaries of the rulemaking activities of State agencies. The summary of legislation affecting JCAR reflects activity of the 92nd GA. This Report also includes a historical overview of the Committee, pertinent historical statistics, and the most recent version of the Illinois Administrative Procedure Act.

JCAR MEMBERSHIP

The Joint Committee on Administrative Rules consists of 12 legislators who are appointed by the General Assembly leadership. Membership is equally apportioned between the 2 houses and the 2 political parties. Two Co-chairs are selected by the Committee membership or appointed by the leaders, as provided by law. The Co-chairs are not members of the same house or the same party.

2002 MEMBERS

Senator Barack Obama, Co-Chair
Senator J. Bradley Burzynski
Senator Doris Karpel
Senator Lisa Madigan
Senator William O'Daniel
Senator Steve Rauschenberger

Representative Art Tenhouse, Co-Chair
Representative Bill Black
Representative Tom Cross
Representative Steve Davis
Representative Phil Novak
Representative Dan Rutherford

FORMER MEMBERS

Bill W. Balthis
Arthur L. Berman
Bill Black
Prescott E. Bloom
Glen L. Bower
Jack E. Bowers
Woods Bowman
John W. Countryman
Mary Lou Cowlshaw
John Cullerton
Michael Curran
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Vince Demuzio
Laura Donahue
James H. Donnewald
Thomas Dunn
Jim Edgar
Beverly Fawell
Monroe Flinn
Barbara Giolitto
James Gitz

Alan J. Greiman
Kenneth Hall
Charles Hartke
Karen Hasara
Carl E. Hawkinson
Larry Hicks
Manny Hoffmann
Emil Jones, Jr.
Jeremiah E. Joyce
Douglas N. Kane
Richard Kelly, Jr.
Bob Kustra
Thaddeus "Ted" Lechowicz
Larry Leonard
Ellis Levin
Richard Luft
John W. Maitland, Jr.
Lynn Martin
John M. Matejek
Roger McAuliffe
Thomas J. McCracken, Jr.

A. T. "Tom" McMaster
Jim Meyer
Myron J. Olson
Coy Pugh
Jim Rea
David J. Regner
Jim Reilly
Philip J. Rock
Tom Ryder
George Sangmeister
Todd Stroger
Frank D. Savickas
Donne E. Trotter
Sam Vinson
Richard A. Walsh
Larry Wennlund
Robert C. Winchester
Kathleen Wojcik
Harry "Babe" Woodyard
Larry Woolard
Harry "Bus" Yourell

ILLINOIS RULEMAKING PROCESS

Law basically exists in 4 forms: constitutional law, statutory law, administrative law and case law. Constitutional law creates broad guidelines. Legislation creates specific restrictions, authorities and programs. Administrative law adds the detail often necessary to implement statutory law. If these 3 categories of law do not sufficiently address all the variables, case law evolves.

In 1975, the Illinois General Assembly enacted the Illinois Administrative Procedure Act (IAPA) [5 ILCS 100] to create a procedure through which administrative agencies would exercise the authority delegated to them by the legislature to create administrative law through the adoption of agency regulations. In 1977, the IAPA was amended to add a process by which the General Assembly would oversee the exercise of this delegated authority through the Joint Committee on Administrative Rules (JCAR), a service agency of the General Assembly.

Rules of an administrative agency are valid and enforceable only after they have been through the rulemaking process prescribed in the IAPA. Rules are for the purpose of interpreting or implementing provisions of a statute and may not actually expand or limit the scope of the statute.

TYPES OF RULEMAKINGS

Proposed Rules. These can be new rules or amendatory rulemakings. Frequently this is referred to as “regular rulemaking”. A 2-step (First Notice and Second Notice) process is followed, requiring from 90 - 365 days. Aside from the basic 90 days, the agency basically controls the timing. Both the general public and the General Assembly, through JCAR, can have input prior to adoption.

Emergency Rules. Rules are effective immediately upon the agency filing them with the SOS or within 10 days after filing. These rules can be developed unilaterally by the agency; JCAR reviews after the rules are adopted. An emergency rulemaking lasts 150 days unless an earlier date is specified. Emergency rulemaking can only be used if the agency finds a threat to the public interest, safety or welfare exists that the rulemaking will address.

Peremptory Rules. The IAPA provides for the immediate adoption of a rule which is required as a result of a federal law, federal rule, collective bargaining agreement, or a court order under conditions that preclude discretion by the agency concerning the rule’s content. Peremptory rules are effective upon filing with the SOS or on the date required by the federal law, federal rule or court order. JCAR reviews these rules after their adoption for proper use of the procedure.

Exempt or Identical in Substance Rules. The IAPA and the Environmental Protection Act create a special process through which PCB can adopt environmental regulations that are identical in substance to federal regulations that the State is required to adopt and enforce. These rulemakings are reviewed by JCAR, after adoption, for proper use of the exempt process.

Required Rulemaking. These are rules of an agency that can be adopted unilaterally by the agency by filing with the SOS. Examples are organization charts, principal address, Freedom of Information Act information, hearing officer qualifications, etc.

THE PROCESS

Drafting of Rules. Administrative rules are drafted by State agencies; there is no central drafting bureau as for statutes. The involvement of the public in the initial drafting is at the discretion of the agency; however, the IAPA encourages early public involvement and now requires agencies to semiannually publish a Regulatory Agenda indicating, to the best of the agency's knowledge, the scope of the next 6 months' rulemaking activity.

First Notice. The First Notice period commences upon publication of an agency's Notice of Rulemaking in the *Illinois Register*. First Notice lasts a minimum of 45 days and terminates when the agency files with JCAR, commencing the Second Notice period. The only limitation is that a rulemaking expires if not adopted within 1 year after commencement of First Notice.

During this time, Department of Commerce and Community Affairs reviews each proposed rulemaking to determine possible impact on small business. This 45 day period is designed for the receipt and evaluation of public comment. A public hearing may or may not be held during this period. The agency can volunteer to hold a hearing or must conduct one at the request of the Governor, JCAR, an association representing over 100 persons, 25 individuals, or a local government. Requests for hearing must be filed within 14 days after publication of the First Notice.

Second Notice. Second Notice commences upon the agency's filing of the Second Notice with JCAR and lasts for a maximum of 45 days, unless extended for an additional 45 days by mutual agreement of JCAR and the agency. During the Second Notice Period, legislative review of the rules is conducted first by the JCAR staff and then at a meeting of the legislative members. JCAR reviews the proposed rules for statutory authority, propriety, standards for the exercise of discretion, economic effects, clarity, procedural requirements, technical aspects, etc.

During the JCAR review, JCAR and the agency can agree to modifications in the rulemaking that are adopted through written JCAR Agreements. The Agreements are appended to the Certificate of No Objection issued by JCAR at its regular meeting, and are still applicable if no Certificate is issued but the agency proceeds to adopt. If the agency does not choose to modify a rulemaking or if policy differences cannot be resolved during the review process, JCAR can take one of several actions.

JCAR Motions.

Certificate of No Objection. With the Certificate, the agency can proceed to adopt the rules by filing them with the SOS for publication in the *Illinois Register*.

Recommendation. (Issued along with a Certificate of No Objection) The agency must respond to the Recommendation in writing within 90 days and can modify or withdraw the rule in response to a JCAR Recommendation. (After going to Second Notice, the agency cannot unilaterally modify/ withdraw a

rulemaking.) However, the agency can also adopt the rules with no changes at anytime after receipt of the Certificate of No Objection.

Objection. An agency has to respond to an Objection in writing within 90 days, but after responding can proceed to adopt. The agency can modify or withdraw in response to a JCAR Objection or adopt the rules without changes. JCAR Agreements still apply.

Filing Prohibition/Suspension. If JCAR determines that a rulemaking constitutes a threat to the public interest, safety or welfare, the members can, by a 3/5 (8 members) vote, prohibit filing of a proposed rulemaking (or suspend an emergency or peremptory rulemaking). As a result, the proposed rulemaking may not be accepted for filing by the Secretary of State or enforced by the agency, or an emergency or peremptory rulemaking that has already been adopted becomes null and void, for a period of 180 days. A prohibition or suspension lasts for a maximum of 180 days, within which the JCAR action may be rescinded if the agency offers to withdraw or modify the rulemaking. If no modification or offer to withdraw are forthcoming from the agency, JCAR is to cause a Joint Resolution to be introduced in the General Assembly through which the General Assembly may permanently continue the prohibition/suspension.

PUBLIC NOTIFICATION

Illinois Register is the official State publication through which the public is informed of rulemaking activity. The *Illinois Register* is published by the Secretary of State every Friday and can be accessed through the General Assembly website (www.legis.state.il.us). The *Register* contains First Notice publication of rulemaking proposals, JCAR actions, a list of Second Notices received by JCAR, notices of final adoption of rulemakings, regulatory agendas (in January and July), executive orders and proclamations, and quarterly indexes to the current and previous issues. Over the course of a year, the *Register* may contain almost 25,000 pages and may be ordered from the Secretary of State for \$290/year. The *Register* is currently available electronically through several publishers.

The Flinn Report: Illinois Regulation is a 4-6 page weekly publication by JCAR that summarizes the rulemaking activity depicted in the matching issue of the *Illinois Register*. The *Flinn Report* is mailed free of charge to anyone who requests it and is also available weekly on the General Assembly's website at www.legis.state.il.us.

Illinois Administrative Code. The compilation of all agency rules is known as the *Illinois Administrative Code*. The *Code* is larger than the *Illinois Compiled Statutes*. The *Code* is maintained electronically by JCAR/LIS. That database is used by the Secretary of State to publish the *Code* on CD Rom and also is used to make all or parts of the *Code* available on-line through several publishers who contract for this service. Such contracts may include weekly JCAR updates of the *Code* text. Currently, no hardcopy version of the complete *Code* is being published.

Both the *Register* and the *Code* are available on the LIS system and, through the State computer center, to attached libraries. In 2003, they will be available on the internet. As both the *Register* and *Code* have been placed in the public domain, anyone who wants to create his or her own database or source material can publish. However, the database is owned by the General Assembly and to use it, private publishers contract with JCAR. Great strides in making both the *Register* and the *Code* more accessible have been accomplished in the past few years.

PUBLIC PARTICIPATION

One of the main reasons the IAPA was enacted was to give the public input into the regulatory process. Any interested persons may contact an agency during the First Notice period to record a position on a rulemaking proposal. The IAPA specifically states that the agency can modify the rulemaking in response to public comment before going to Second Notice. Additionally, most agencies consult with their identified interest groups during the pre-First Notice drafting process.

When the rulemaking goes to Second Notice, JCAR receives a copy or summary of all written comment submitted to the agency. In addition, the public may contact JCAR directly, and frequently does so if the agency refused to modify in response to public comment, or if they discovered the existence of the proposal too late for the First Notice public comment period.

Public comment is vital to the JCAR review process. Frequently, it is only through this comment that the Committee can fully recognize the effect of a rule on the individual, business or local government that has to adhere to it on a daily basis.

The public may also lodge complaints about existing rules outside the process for adopting and amending rules. Agencies are required to allow the public to suggest rule revisions. Additionally, JCAR may open an investigation into an existing rule on its own volition or based on public complaint.

GENERAL RULEMAKING

In 2002, JCAR reviewed 595 rulemakings, 500 of which were general rulemakings, 78 emergency rulemakings, 6 peremptory rulemakings and 11 Pollution Control Board exempt rulemakings. JCAR voted 1 Filing Prohibitions, 8 Objections and 16 Recommendations on general rulemakings; 7 Objections and 1 Recommendation on emergency rulemakings; 1 Objection on a peremptory rulemaking; and 1 general Objection issued to the Department of Public Aid because of the agency creating policy outside rule to govern the establishment of some of its Medical Assistance reimbursement rates.

Some of the more notable rules on which JCAR took action are described here.

CMS – TERM APPOINTMENTS

Department of Central Management Services proposed a rulemaking broadening the authority of its Director to make term appointments by no longer requiring that the appointee come from an eligible list. It allows agency directors, in addition to CMS, to make “*Rutan*-exempt” term appointments without adherence to eligible lists and specifies that an employee appointed to a coded position, who immediately prior to the appointment served for at least 2 years in a non-coded position, shall serve a 30-day (rather than the normal 6-month) probationary period. Term appointments are defined as those with an annual salary of \$41,832 or more that are for a term of 4 years. These appointments are authorized by Sec. 8b.18 of the Personnel Code.

The *Rutan* decision by the U.S. Supreme Court was designed to contain patronage practices in Illinois. Three classes of employees are exempt from *Rutan*: those in policymaking (commonly Deputy Directors, Associate Directors, some but not all division chiefs and high ranking administrative positions); spokesmen (press officers, legislative liaisons); and confidential positions (private secretaries to an agency director, investigators, Inspectors General and related support staff, etc.). CMS is to examine positions to determine whether they meet *Rutan* exempt criteria.

This rulemaking departs from the longstanding 6-month probationary period, allows agency directors to take personnel actions independent of the centralized personnel system under the auspices of CMS, and abandons use of qualified candidate lists for appointment to State service.

The announced rationale for this rulemaking is to alleviate personnel shortfalls due to early retirements. Alterations in appointment practices to address such a temporary situation are not warranted because the Personnel Code has mechanisms for emergency, temporary and provisional appointments that could address the management difficulties anticipated by CMS.

At its September meeting, JCAR objected because, contrary to Section 5-100(c) of the IAPA, the Department did not provide adequate justification and rationale for the proposed rulemaking and for departing from existing personnel policies, notably:

- the abandonment of a 6-month probationary period for persons moving from a non-coded to a coded position;
- the extraordinary action of long-term measures to address possible, unknown, short-term needs by appointing permanent and/or 4-year term appointees to address temporary management shortfalls when interim replacements could be designated from within existing agency ranks or obtained on an emergency, temporary or provisional basis pursuant to the Personnel Code;

- the delegation of CMS authority under the Personnel Code to agency directors to make, process and administer term appointments;
- the abandonment of approved, qualified personnel candidate lists for term appointments.

CMS refused to withdraw or modify the rulemaking in response to the Objection and JCAR, therefore, published a Notice of Failure to Remedy. On December 2, 2002, CMS proposed an additional rulemaking terminating most of the new provisions on 4/30/03. As of this writing, that rulemaking has not been moved to 2nd Notice.

DPA – MEDICAL ASSISTANCE ELIGIBILITY DETERMINATION

Department of Public Aid proposed a rulemaking adding additional limitations on assets that can be held in an annuity that will qualify as an exempt asset. At its November meeting, JCAR objected and voted a filing prohibition because DPA exceeded its authority under federal law by presuming that all assets put into an annuity within the 3 years prior to applying for medical assistance were transferred for the purpose of harboring assets. The federal government allows states to established standards for determining when a transfer is for the purpose of harboring assets. Instead, DPA proclaimed all transfers to be for that purpose and assigned the burden of proving otherwise to the applicant. JCAR found that this policy constitutes a threat to the interest and welfare of the elderly of Illinois who may be in need of medical assistance. DPA has 90 days (after 11/19/02) to respond to the rulemaking, which may not be adopted for 180 days.

DOA – INCONSISTENT REGULATORY PROGRAMS

Department of Agriculture proposed a rulemaking requiring cervids (elk and deer) entering Illinois to originate from herds that have been monitored for chronic wasting disease for at least 3 years. This conflicted with a Department of Natural Resources emergency rule that required at least 5 years monitoring. JCAR objected, at its September meeting, to DNR and DOA promulgating rules addressing the same issue and affecting many of the same persons that establish different standards to be followed by those persons. DOA and DNR responded by arriving at a non-conflicting solution.

DCFS – REMOVAL OF A CHILD FROM FOSTER PLACEMENT

The Department of Children and Family Services proposed a rulemaking creating a 2-tiered process for appealing a change of placement of a child with a relative caregiver or foster parents. At its April meeting, JCAR recommended that DCFS review its policy and its various rules governing removal of a child from a foster care placement while an appeal is pending. Current DCFS rules (89 Ill. Adm. Code 337.130) provided that a child will remain in a placement pending appeal of that placement unless imminent risk of harm can be shown. Public commentators argued that the only consideration in removing a child pending appeal should be the best interests of the child. DCFS has admitted that it does not uniformly apply the existing imminent risk standard. This policy obviously needed to be reviewed for currency, consistency, standard application, and potential revision. DCFS responded that it will review this policy.

CMS – TRAVEL REIMBURSEMENT RULES

Department of Central Management Services replaced a \$118/night lodging rate for the Washington,

D.C. area with a cross-reference to another Illinois rule that cross-references an Illinois statute that cross-references a federal statute that authorizes the rate to be set by federal rule. It also replaced the incorporation of the federal regulation that establishes lodging rates for Cook County and the Washington, D.C. area with a cross-reference to State statute that requires the State rate to be whatever rate is established pursuant to federal statute. At its August meeting, JCAR objected because the proposed regulations make it as difficult as possible for the public to ascertain the rate at which State employees will be reimbursed for travel. Although reliance on the Federal rate is statutorily authorized, the rules should still either recite the exact rates or provide the public with a single direct citation to the Federal statute or rule that does establish the specific rate.

DonA – LIMITATION ON DUE PROCESS

The Department on Aging proposed a rulemaking holding that decisions, actions or inactions that change Community Care Program eligibility, rates or benefits due to automatic, non-discretionary changes in State regulations cannot be appealed. At its October meeting, JCAR objected. When program guidelines are dictated by a force or entity over which DonA has no control, like Congress, the General Assembly, a federal agency, or another State agency with jurisdiction over the program, appeal to DonA would be fruitless and, thus, is reasonable to deny. The policy would more appropriately be argued with the originating entity, not DonA. These situations are already covered by existing rule. This denial of appeal, however, should not extend to DonA's own policies, as this rulemaking proposes. As DonA failed to provide a convincing rationale for why State regulations are now being included, JCAR objected.

ICC – Abbreviated Rulemaking Procedure

Since 1998, the Public Utilities Act [220 ILCS 5/10-113(b)] has permitted ICC to amend rules after a rehearing of its order adopting those rules, using a short-form process. These amendments are not bound by 1st Notice requirements of the IAPA (public disclosure and opportunity to comment), but must comply with 2nd Notice (JCAR review) requirements. The first use of this new statutory procedure occurred during 2002.

In December 2001, ICC adopted rules implementing the statutorily required customer credits that must be issued when a local exchange carrier (LEC, i.e., telephone company) fails to provide promised services in a timely manner. The rule allowed for exceptions to the penalty on the phone company when the delay or lack of service was caused by certain narrowly defined "emergency situations." One of those situations was a labor shortage caused by a strike or work stoppage lasting up to 7 days. After adoption, the LECs, under Section 10-113(b), requested that ICC expand the exemption for strikes/work stoppages. ICC reheard the issue and used this short-form rulemaking process to increase the 7 day duration to 90 days.

At its June meeting, JCAR issued an Objection, finding that the rulemaking interferes with the collective bargaining process. It constitutes State action granting one party to labor negotiations the benefit of a waiver of an otherwise generally applicable rule for the purpose of accommodating that party's delayed customer response times resulting from the other party's use of a National Labor Relations Act sanctioned economic weapon (i.e., a strike or work stoppage).

ICC refused to modify or withdraw the rulemaking, claiming it has insufficient evidence in the current

docket to support a different exemption period. (Labor had claimed that, because of the short-form rulemaking procedure, it did not have sufficient notice to present its contentions during the rehearing.) However, ICC has initiated a new rulemaking proceeding to determine whether strikes and work stoppages should be considered an emergency situation and, if so, the appropriate length of time during which LECs should be exempt from paying customer credits.

2002
GENERAL RULEMAKINGS
PROPOSED BY THE AGENCY

AGENCY	NUMBER OF RULEMAKINGS
Department on Aging	5
Department of Agriculture	13
Attorney General	2
Office of Banks and Real Estate	7
Capital Development Board	1
Debt Collection Board	2
Department of Central Management Services	29
Department of Children and Family Services	20
Department of Commerce and Community Affairs	7
Illinois Commerce Commission	25
Community College Board	2
Comptroller	3
Department of Corrections	4
Deaf and Hard of Hearing Commission	1
State Board of Education	14
State Board of Elections	2
Department of Employment Security	1
Environmental Protection Agency	3
Department of Financial Institutions	8
State Fire Marshal	6
Gaming Board	2
Guardianship and Advocacy Commission	1
Health Facilities Planning Board	4
Historical Preservation Agency	1
Housing Development Authority	1
Department of Human Rights	2
Department of Human Services	34
Department of Insurance	14
Illinois Labor Relations Board	4
Lieutenant Governor	1
Liquor Control Commission	2
Lottery	1
Department of Natural Resources	45
Department of Nuclear Safety	8

Pollution Control Board	17
Department of Professional Regulation	22
Department of Public Aid	43
Department of Public Health	35
Illinois Racing Board	16
Department of Revenue	40
Secretary of State	26
Sex Offender Management Board	2
State Employees Retirement System	1
Department of State Police	3
State Police Merit Board	3
Illinois State Toll Highway Authority	1
Student Assistance Commission	8
Teacher's Retirement System	3
Department of Transportation	22
Treasurer	2
Department of Veterans Affairs	1

TOTAL	520
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2002
GENERAL RULEMAKINGS
CONSIDERED BY JCAR

AGENCY	NUMBER OF RULEMAKINGS
Department on Aging	6
Department of Agriculture	16
Attorney General's Ethics Committee	1
Office of Banks and Real Estate	7
Capital Development Board	4
Department of Central Management Services	27
Department of Children and Family Services	26
Department of Commerce and Community Affairs	5
Illinois Commerce Commission	14
Comptroller	4
Department of Corrections	1
Debt Collection Board	1
State Board of Education	17
Educational Labor Relations Board	1
State Board of Elections	1
Emergency Management Agency	3
Department of Employment Security	1
Environmental Protection Agency	4
Department of Financial Institutions	7
State Fire Marshal	3
Gaming Board	2
Guardianship and Advocacy Commission	1
Housing Development Authority	2
Department of Human Rights	2
Department of Human Services	26
Department of Insurance	18
Liquor Control Commission	2
Lieutenant Governor	1
Lottery	1
Department of Natural Resources	53
Department of Nuclear Safety	6
Pollution Control Board	14
Department of Professional Regulation	22

Department of Public Aid	34
Department of Public Health	43
Illinois Racing Board	13
Department of Revenue	43
Secretary of State	25
State Employees Retirement System	1
Department of State Police	3
State Police Merit Board	3
Student Assistance Commission	8
Teacher's Retirement System	3
Department of Transportation	22
Treasurer	2
Department of Veterans Affairs	1

TOTAL	500
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2002
GENERAL RULEMAKINGS:
JCAR ACTION

AGENCY	REC	OBJ	PROHIBIT
Department on Aging	1	1	0
Department of Agriculture	0	1	0
Department of Central Management Services	0	3	0
Department of Children and Family Services	2	0	0
Illinois Commerce Commission	1	1	0
Department of Commerce and Community Affairs	1	0	0
State Board of Education	1	0	0
Educational Labor Relations Board	1	0	0
Department of Human Services	0	1	0
Liquor Control Commission	1	0	0
Department of Natural Resources	1	0	0
Department of Professional Regulation	1	1	0
Department of Public Aid	0	0	1
Department of Revenue	1	0	0
Secretary of State	4	0	0
Department of State Police	1	0	0
TOTALS	16	8	1

2002
GENERAL RULEMAKINGS:
BASIS FOR JCAR ACTION

Basis for Objection	Number of Objections	Percentage of Total
Inadequate Rationale	1	14%
Insufficient Due Process	1	14%
Insufficient Standards for Exercising Agency Discr	1	14%
Statutory Authority	1	14%
Unduly Burdensome Regulation	3	43%
TOTAL	7	100%

Basis for Recommendation	Number of Recommendations	Percentage of Total
More Timely Rulemaking	3	19%
Further Rulemaking	4	25%
Monitor Implementation and Report to JCAR	1	6%
Policy Not in Rules	1	6%
Statutory Authority/Legislative Intent	6	38%
Unduly Burdensome Regulation	1	6%
TOTAL	16	100%

Basis for Filing Prohibition	Number of Filing Prohibitions	Percentage of Total
Statutory Authority/Legislative Intent	1	100%
TOTAL	1	100%

2002

EMERGENCY RULEMAKING

Section 5-45 of the Illinois Administrative Procedure Act specifies that agencies may use this short-form rulemaking procedure, in which a rule is adopted without prior opportunity for public and JCAR comment, only if the agency finds that an emergency exists that requires the adoption of a rule within fewer days than normally required. The agency must state the emergency situation in writing and make an effort to notify the affected public. An emergency rule becomes effective immediately upon filing with the Secretary of State or at a stated date less than 10 days after filing and is effective for up to 150 days, after which a general rulemaking has to be adopted if the policy is to continue. No emergency rule may be adopted more than once in any 24-month period, with statutorily specified exceptions.

DNR – INCONSISTENT REGULATORY PROGRAMS

Department of Agriculture proposed a rulemaking requiring cervids (elk and deer) entering Illinois to originate from herds that have been monitored for chronic wasting disease for at least 3 years. This conflicted with a Department of Natural Resources emergency rule that required at least 5 years monitoring. JCAR objected, at its September meeting, to DNR and DOA promulgating rules addressing the same issue and affecting many of the same persons that establish different standards to be followed by those persons. DOA and DNR responded by arriving at a non-conflicting solution.

DPH – LICENSING OF PLUMBING CONTRACTORS

Department of Public Health established the Plumbing Contractor Registration Code requiring annual registration of plumbing contractors doing business in Illinois and payment of a \$300 fee, in addition to the \$100 fee a contractor may have already paid for licensure as a plumber. Contractor licensure mainly entails review of the application and of the evidence of insurance/bonding, which would not appear to necessitate the high licensing fee. JCAR objected at the May meeting because the rule's \$300 annual license fee would have had adverse economic impact on contractors without any extraordinary agency responsibility justifying that high a fee. DPH modified the emergency rule to reduce the fee to \$100 and issued refunds to the approximately 700 plumbing contractors who had previously paid the \$300 fee.

DHS – ABUSE AND NEGLECT IN MI/DD FACILITIES

Department of Human Services adopted an emergency rule that revised procedures for reporting abuse and neglect (A/N) of residents in State-operated and community agency facilities for the mentally ill or developmentally disabled to reflect new statutory requirements for reporting substantiated findings of A/N to DPH's Nurse Aide Registry (NAR). JCAR objected to the emergency rule at the February meeting because, among other things, the amendments: did not include standards for the exercise of agency discretion in choosing when to issue an administrative action recommendation; did not reflect the statutory requirement that DHS report a substantiated finding to NAR; and were unclear as to the procedures for reporting a substantiated finding to the employee, agency, facility and NAR. DHS responded by modifying the permanent rulemaking to correct the deficiencies noted in the Objection.

2002
EMERGENCY RULEMAKINGS
ADOPTED BY THE AGENCY

AGENCY	NUMBER OF RULEMAKINGS
Department on Aging	1
Department of Agriculture	2
Office of Banks and Real Estate	3
Department of Central Management Services	7
Department of Children and Family Services	3
Department of Commerce and Community Affairs	1
Illinois Commerce Commission	1
Comptroller	1
Housing Development Authority	1
Gaming Board	1
Department of Human Services	5
Department of Insurance	2
Department of Natural Resources	4
Department of Nuclear Safety	2
Department of Professional Regulation	3
Department of Public Aid	25
Department of Public Health	3
Illinois Racing Board	3
Department of Revenue	3
Secretary of State	4
State Employees Retirement System	1
Department of State Police	2
Illinois State Toll Highway Authority	1
TOTAL	79

2002
EMERGENCY RULEMAKINGS
CONSIDERED BY JCAR

AGENCY	NUMBER OF RULEMAKINGS
Department on Aging	1
Department of Agriculture	2
Office of Banks and Real Estate	3
Department of Central Management Services	7
Department of Children and Family Services	3
Department of Commerce and Community Affairs	1
Illinois Commerce Commission	3
Housing Development Authority	2
Gaming Board	1
Department of Human Services	6
Department of Insurance	2
Department of Natural Resources	3
Department of Nuclear Safety	2
Department of Professional Regulation	1
Department of Public Aid	28
Department of Public Health	2
Illinois Racing Board	2
Department of Revenue	3
Secretary of State	4
State Employees Retirement System	1
Illinois State Toll Highway Authority	1
TOTAL	78

2002
EMERGENCY RULEMAKINGS:
JCAR ACTION

AGENCY	REC	OBJ	SUSPENSION
Office of Banks and Real Estate	1	1	0
Department of Central Management Services	0	1	0
Department of Human Services	0	1	0
Department of Natural Resources	0	1	0
Department of Public Health	0	1	0
Secretary of State	0	2	0
TOTALS	1	7	0

2002
EMERGENCY RULEMAKINGS:
BASIS FOR JCAR ACTION

Basis for Objection	Number of Objections	Percentage of Total
Insufficient Standards for Exercising Agency Discretion	1	11%
No Unavoidable Emergency Existed	3	33%
Policy Not in Rules	1	11%
Resulting Regulatory Deficiency	1	11%
Statutory Authority/Legislative Intent	1	11%
Unduly Burdensome Regulation	2	22%
TOTAL	9	100%

Basis for Recommendation	Number of Recommendations	Percentage of Total
Avoid Unnecessary Use of Emergency Rulemaking	1	100%
TOTAL	1	100%

Basis for Suspension	Number of Suspensions	Percentage of Total
TOTAL	0	0%

2002

PEREMPTORY & EXEMPT RULEMAKING

Section 5-50 of the Administrative Procedure Act specifies that agencies may use this short form of rulemaking procedure, in which the rule is adopted without prior opportunity for public and JCAR comment, only if the rulemaking is required by federal law, federal regulations, court orders or collective bargaining agreements and if the agency cannot exercise any discretion with respect to the rule content. Agencies must file the preemptory rule with the Secretary of State within 30 days after the change in rules is required.

Exempt rulemaking is a specialized form of rulemaking, similar to the preemptory rulemaking process, reserved for use by the Pollution Control Board (PCB) under the Environmental Protection Act. PCB can use this short form procedure only to adopt Illinois regulations that are “identical in substance” to mandated federal regulations.

In 2002, the Department of Agriculture utilized preemptory rulemaking twice to adopt regulations identical to federal regulations; CMS twice to implement collective bargaining agreements; and DHS once to reflect a change in federal regulations. PCB adopted 14 rulemakings identical in substance to federal regulations.

CMS – INAPPROPRIATE USE OF PEREMPTORY RULEMAKING

CMS added to its pay codes several new titles and replaced titles that were approved by the Civil Service Commission and were the subject of a memorandum of understanding (MOU) with AFSCME. However, CMS used preemptory rulemaking to implement the MOU, well past the 30-day limit set by Section 5-50 of the IAPA. At its December meeting, JCAR objected.

2002
PEREMPTORY & EXEMPT RULEMAKINGS
ADOPTED BY THE AGENCY

AGENCY	NUMBER OF RULEMAKINGS
Department of Agriculture	2
Department of Central Management Services	2
Department of Human Services	1
Pollution Control Board	14
TOTAL	2002

2002
PEREMPTORY & EXEMPT RULEMAKINGS
CONSIDERED BY JCAR

AGENCY	NUMBER OF RULEMAKINGS
Department of Agriculture	2
Department of Central Management Services	3
Department of Human Services	1
Pollution Control Board	11
TOTAL	17

2002
PEREMPTORY & EXEMPT RULEMAKINGS:
JCAR ACTION

AGENCY	REC	OBJ	SUSPENSION
Department of Central Management Services	0	1	0
TOTALS	0	1	0

2002
PEREMPTORY & EXEMPT RULEMAKINGS:
BASIS FOR JCAR ACTION

Basis for Objection	Number of Objections	Percentage of Total
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Lack of Statutory Authority	1	100%
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TOTAL	1	100%
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Basis for Recommendation	Number of Recommendations	Percentage of Total
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TOTAL	0	0%
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Basis for Suspension	Number of Suspensions	Percentage of Total
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TOTAL	0	0%
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2002

2002 GENERAL OBJECTION TO DPA POLICY

At its January 2002 meeting, JCAR objected to a Department of Public Aid rulemaking, but also more generally to an ongoing policy of the Department of setting outpatient medical assistance reimbursement rates outside of rules. Section 5-5 of the Public Aid Code states that the Department of Public Aid, by rule, shall determine the rate of reimbursement for medical assistance, which includes outpatient hospital services. The affected providers and all other Illinois citizens have the right to full disclosure of and input into the creation of State government policies. Adoption and disclosure of DPA policy through the IAPA process is required by the Public Aid Code, the Illinois Administrative Procedure Act and the Illinois Supreme Court in *Senn Park Nursing Center v. Miller*, 455 N.E. 2nd 153, 74 Ill. Dec. 132, 1983.

2002
JCAR ASSESSMENT OF
APPROPRIATENESS OF AGENCY RESPONSE
TO JCAR ACTION

AGENCY	ASSESSMENT				
	APPROPRIATE	FAILURE TO REMEDY	JOINT RESOLUTION	JCAR WILL MONITOR	NO COMMENT
Department on Aging	1	1		1	
Department of Agriculture	1				
Office of Banks and Real Estate	2				1
Department of Central Management Services	1	2			
Department of Children and Family Services	1			1	
Illinois Commerce Commission	2	1		1	
State Board of Education	1			1	1
Educational Labor Relations Board					1
Department of Human Services	2			1	1
Department of Natural Resources	2				
Department of Professional Regulation		1			1
Department of Public Aid		2			
Department of Public Health	2				
Illinois Racing Board	1				
Secretary of State	3				
Department of State Police	1				
TOTAL	20	7	0	5	5

PUBLIC ACT REVIEW

Section 5-105 of the Illinois Administrative Procedure Act [5 ILCS 100/5-105] requires the Joint Committee on Administrative Rules to maintain a review program to monitor the implementation of new laws and changes in law through State agency rulemaking activities. The Committee fulfills this statutory obligation through its Public Act review program.

Under this program, the Committee staff annually reviews each new Public Act and makes a preliminary determination as to whether rulemaking might be necessary for proper implementation. After the list has been culled of those obviously not requiring rulemaking (appropriations, criminal and civil law, local government issues), the affected State agency is contacted for its opinion. If necessary, these written contacts are followed up with discussion between JCAR and the agency.

The final list of Public Acts for which JCAR and the agency agree that rulemaking is warranted is then monitored by the Committee as long as necessary to insure that progress is made toward implementation. The primary goal of the Committee in this program is to ensure that appropriate rules are put into effect in a timely manner, as required by Section 5-105 of the IAPA.

If suitable progress is not made, JCAR, by the vote of a majority of its members, can initiate an investigation into existing rules of the agency. If, after the agency's appearance before the Committee to explain its failure to adopt anticipated rules, the JCAR members are not satisfied with the agency response, the Committee can object to the agency's conduct and may initiate further legislation to clarify the issue.

Frequently an agency is prompted to complete necessary rulemaking by conversation with JCAR or the agency enters voluntarily into written Agreements with JCAR to more thoroughly implement statutory requirements. At other times, JCAR votes a Recommendation or Objection based on a need for additional rulemaking. Four such actions were taken in 2002.

JCAR aggressively follows its statutory mandate to monitor the implementation of Public Acts. However, the Committee is seldom required to press an agency to implement a new Public Act. Agencies generally respond to JCAR inquiries that they agree rulemaking is necessary and by stating an approximate date for commencement of rulemaking activity. In some instances, they offer valid responses as to why rulemaking will not be necessary. Occasionally, the JCAR inquiry brings to an agency's attention a Public Act relating to its programs that had escaped its notice. The Public Act review program can be helpful to both the legislature and the agencies in meeting their obligation to put the laws of the State of Illinois into effect in a timely and effective manner.

— COMPLAINT REVIEW PROGRAM —

The Illinois Administrative Procedure Act authorizes the Joint Committee on Administrative Rules to review and investigate the rulemaking activities of State agencies when it receives a written complaint.

JCAR operates its complaint review program under Part 260 of its operational rules. Complaints may address one or more of the following: an existing rule of an agency; failure of an agency to fully or properly enforce its rules; absence of rules required by statute or necessary for the proper conduct of an agency program or function; and an agency rule that is applied, but not embodied in the rules of the agency promulgated pursuant to the IAPA.

Upon a receipt of a complaint, JCAR initiates a review to determine the need for a full investigation. Staff may raise questions or problems to discuss with the agency and will attempt to inform the agency of the substance of the complaint and any proposals for JCAR action prior to the meeting. Staff will report the results of the review and a proposal for action at a JCAR monthly meeting. A complaint may be placed on the agenda for a JCAR meeting by any JCAR member or the Executive Director if evidence exists that there are possible problems with the rules. If the same issues have been previously considered by JCAR, a complaint will not be placed on the agenda, unless the complaint reveals information not available to JCAR at the time the issue was considered and, if the information were available, it would have altered the outcome. Based on the complaint, JCAR may issue an Objection or Recommendation to existing rule, or to agency failure to maintain adequate rule, and afford the agency an opportunity to respond.

Complaints should be forwarded to the Executive Director of the Joint Committee at:

Joint Committee on Administrative Rules
700 Stratton Building
Springfield, Illinois 62706

Department of Public Aid

In January 2002, JCAR received a request for a review of Department of Public Aid rules at 89 Ill. Adm. Code 120.381(a)(3). The complainant contended that this subsection violates 305 ILCS 5/5-2 that authorizes DPA to establish, by rule, the amount of assets to be disregarded in determining eligibility for medical assistance, which shall at a minimum equal the amounts to be disregarded under the Federal Supplemental Security Income (SSI) program.

Section 120.381(a)(3) limits the value of resources needed for self support to \$6,000. SSI provisions do not place a limit on this value. Specifically, 42 USC 1382b excludes from the resources of an individual "other property which is so essential to the means of self-support of such individual (and such spouse) as to warrant its exclusion, as determined in accordance with and subject to limitations prescribed by the Commissioner of Social Security, except that the Commissioner of Social Security shall not establish a limitation on property (including the tools of a tradesperson and the machinery and livestock of a farmer) that is used in a trade or business or by such individual as an employee". SI 01130.500 B1a of the SSI manual titled Property Essential to

Self-Support – Overview states that property used in a trade or business is excluded regardless of value or rate of return.

DPA disagrees with the complainant's contention, claiming that DPA is not required to follow the provisions of the Social Security Act's (SSA) Section 1613, the laundry list of exemptions, because Illinois is a "209b state". DPA narrowed the laundry list to exclude any property other than property used as a means of self-support, despite language in Section 1613(3) prohibiting the Commissioner of Social Security from establishing a limitation on property used in a trade or business or by an individual functioning as an employee. (Otherwise, the Commissioner has the authority to set a limit on the value of household goods, personal effects and an automobile (1613 (2A)).) DPA contends that since a person in a nursing home is no longer capable of self-support, his or her property, such as farmland, is excluded from the "off-limits" provision (1613 (A)). Under SSA Section 1902f, the 209b states have the authority to set more stringent provisions on all assets if the more restrictive policy was in effect prior to 1/1/72.

At its January 9, 2003 meeting, JCAR issued an Objection to DPA's existing rule (Exempt Assets; 89 Ill. Adm. Code 120.381) because it violates 305 ILCS 5/5-2 that authorizes DPA to establish the amount of assets to be disregarded in determining eligibility for medical assistance, which shall at a minimum equal the amounts to be disregarded under the Federal Supplemental Security Income program. As SSI has exempted any assets of an individual used in a trade or business, DPA's rule, by placing a limitation on that property, violates 305 ILCS 5/5-2. DPA has until April 9, 2003 to respond to the Objection.

Division of Specialized Care for Children

In April 2002, JCAR received a request to initiate a complaint review into Division of Specialized Care for Children (DSCC) rules establishing financial eligibility requirements for services. The request was from a family with 2 multiply handicapped children who had been receiving financial assistance for speech therapy until last year when the children's father received a pay raise. With the increased income, DSCC informed the parents that they no longer qualified for financial assistance because their income exceeds 285% of the federal poverty level (FPL). The parents appealed the determination, requesting that eligibility standards allow for deductions for out-of-pocket medical expenses and recognize the impact of more than one child in a family with special health care needs. DSCC, responding that the only criteria that can be considered are those set out in the rules, denied the appeal and referred the parents to JCAR for a complaint review. Specifically, the parents requested a review of the financial eligibility scale set out in 89 Ill. Adm. Code 1200.50(c)(2) and Appendix A that is based on family size and maximum family income.

Statute provides general, nonspecific authorization to the Board of Trustees of the University of Illinois to receive, administer and hold federal and State funds for DSCC services. DSCC administers its portion of the maternal and child health services block grant. This block grant specifies that eligibility for services is confined to mothers, infants and children, and children with special health care needs, particularly those of low-income families. By statute, at least 30% of the funds from this block grant must be expended for children with special health care needs, and that 30%+ is the share DHS assigns to DSCC. DHS had assigned 32.1% to DSCC, but in FY03 reduced the DSCC share to 30%. Eligibility was set at 285% of FPL through analyzing cases over several years. DSCC found that about 95% of its cases above 285% FPL had some insurance and ability

to pay for health care services. Under current rule, DSCC assesses whether a family has any insurance and, if not, first refers the family to Kidcare or Medicare. DSCC pays for services not covered by Kidcare or Medicare. DSCC services largely involve care coordination and procurement; direct financial assistance is available only as a last resort. FY02 funding for DSCC was \$7.5 million in federal maternal and child health services block grant funds and \$13 million from General Revenue Fund (GRF), for a total of \$20.5 million. For FY03, \$1.5 million in GRF and another \$.5 million were cut from DSCC's share of the federal block grant, for a total cut of \$2 million, leaving DSCC with \$18.5 million for FY03.

JCAR considered the request for a review of existing rule at its July 2002 meeting and determined that, since only a change in statute can alleviate this family's difficulties by requiring separate eligibility standards for a family with more than one disabled child requiring care, further review of the rule will not be productive until the underlying statute is amended.

LEGISLATIVE ACTIVITY RELATING TO JCAR AND THE IAPA

JCAR reviews any proposed legislation that amends the Illinois Administrative Procedure Act (IAPA) and brings to agencies' attention any resulting changes in rulemaking procedures. Legislation involving issues that have recently come before JCAR is also followed. Under its IAPA mandate to continually seek to improve the rulemaking process, JCAR occasionally initiates legislation revising the IAPA. It also may propose legislation when rules review brings attention to a statutory insufficiency or lack of clarity or to enforce its Objections or Recommendations when an agency has refused to adhere to those Objections or Recommendations. The following summaries of legislation affecting JCAR and the rulemaking process cover the 92nd General Assembly (2001 and 2002).

In the 92nd G.A., JCAR sponsored a bill amending the IAPA. Public Act 92-405 (eff. 8/16/01) is designed to solve several problems that arise from the fact that agencies are allowed to file rule text with the Secretary of State that comes from their own databases rather than the one maintained by JCAR and the Legislative Information System. The rule process has no office comparable to the Legislative Reference Bureau through which rules are drafted from a central database. Therefore, accuracy of background text and accurate depiction of changes is a problem. The new law adds a definition of "rulemaking" that explicitly requires use of underlining and striking to show changes in rule text published in the *Illinois Register* at 1st Notice and adoption. Background text must match the current text of the *Illinois Administrative Code*. In addition, PA 92-405 clarifies that, once the rulemaking process has begun, an agency may not switch text from one proposed rulemaking to another. The IAPA is structured to insure both a public comment period and a JCAR review period. Switching text among rulemakings in the middle of the process thwarts the public's ability to track a proposal through the process.

SJR 26 (eff. 5/31/01) was introduced to continue 2 Suspensions of State Board of Education peremptory rulemakings adopted in response to federal court orders issued in the *Corey H.* case. SJR 26 passed the Senate by 56-0 and the House by 117-0, for the first time making a JCAR Prohibition or Suspension permanent through a joint resolution. Under Section 5-125(c) of the IAPA, "the rule or the portion of the rule shall be considered repealed and the Secretary of State shall immediately remove the rule or portion of a rule from the collection of effective rules". However, SBE was ordered by the federal court to proceed with implementing the court's rulings concerning special education that resulted from the *Corey H.* case. SBE responded by posting its policies on its website, and litigation of this matter continued. (See PA 92-709 below.)

PA 92-10 (eff. 6/11/01) is the automatic approval of emergency rulemaking to implement the budget for fiscal year 2002. PA 92-597 (eff. 6/28/02) does the same for fiscal year 2003 budget implementation. Additionally, JCAR's option to suspend such an emergency rule is specifically precluded. Such provisions hinder legislative oversight, through JCAR, of the initial budget implementation; however, no limitation is placed on JCAR's consideration of the permanent rulemakings that must follow the emergency rules if these provisions are to apply for more than 150 days.

PA 92-330 (eff. 1/1/02) amends both the IAPA and the Freedom of Information Act (FOIA). Amendments to Section 5-40 of the IAPA require an agency to include in its 1st Notice published in the *Illinois Register* a descriptive title or description of any published study or research report used in developing the rule, the identity of the person who performed such study, and details of how to acquire a copy. The agency shall also make copies of the underlying data available to the public upon request if the data are not protected from disclosure under FOIA. An amendment to FOIA redefines “public record” to include the underlying data of a public body’s factual reports, inspection reports, and studies. The exemption from inspection and copying for faculty course or research materials does not include information produced or prepared under a State contract and information that may be used to support a State policy or regulatory decision.

Four other Public Acts relate to issues that arose during the course of rules review:

- * PA 92-471 (eff. 8/22/01) amends the Children and Family Services Act to create the Direct Child Welfare Service Employee License Board within the Department of Children and Family Services and empowers the Board to make final determinations concerning revocation, suspension or reinstatement of an employee’s direct child welfare service license after a hearing. JCAR suggested this clarification.
- * PA 92-188 (eff. 8/1/01) amends the Emergency Telephone System Act to exempt State correctional institutions and facilities from the Act’s enhanced 9-1-1 provisions.
- * PA 92-484 (eff. 8/23/01) amends the sales tax Acts to clarify that “equipment” includes chemicals or chemicals acting as catalysts, but only if the chemicals or chemicals acting as catalysts effect a direct and immediate change on a product being manufactured or assembled for wholesale or retail sale or lease (or, in the case of graphic arts machinery and equipment, on a graphic arts product). JCAR suggested a statutory clarification.
- * PA 92-709 (eff. 7/19/02) amends the School Code to require the State Teacher Certification Board to categorically certify a special education teacher in one or more of the following specialized categories of disability if the special education teacher applies and qualifies for such certification: (1) serious emotional disturbance, (2) learning disabilities, (3) autism, (4) mental retardation, (5) orthopedic (physical) impairment, (6) traumatic brain injury, and (7) other health impairment. This statutory change is the General Assembly's response to the federal court's decision in the *Corey H.* case. However, ISBE is not enforcing PA 92-709 in light of the federal judge's decree. For further discussion of this issue, see the article in this annual report summarizing judicial activity that impacts upon rulemaking.

JUDICIAL ACTIVITY RELATING TO

JCAR AND THE IAPA

Since JCAR's function is closely related to the interpretation of the Illinois Administrative Procedure Act (IAPA), it monitors and reports on court decisions and Attorney General opinions that affect the interpretation of the Act. One of the enumerated responsibilities of JCAR under the Act is "to study the impact of legislative changes, court rulings and administrative action on agency rules and rulemaking" [5 ILCS 100/5-105(c)]. This summary highlights the most significant judicial actions since enactment of the IAPA and discusses current activity.

KEY INTERPRETATIONS OF THE IAPA

- Two past decisions of the Illinois courts construing the IAPA in accordance with positions supported by JCAR are especially noteworthy. The cases involved an attempt by the Department of Public Aid to change the method by which it calculated Medicaid payments to nursing homes. In the first case, *Senn Park I* (*Senn Park Nursing Center v. Miller*, 118 Ill. App. 3d 504, 455 N.E.2d 153, 74 Ill. Dec. 123 (1983)), the First District Appellate Court held that DPA's failure to follow the IAPA rulemaking procedures invalidated a new method it utilized for calculating Medicaid payments. The court stated that the definition of a "rule" found in Sec. 1-70 of the IAPA should be broadly construed in order to safeguard the public's right to comment on proposed agency policies. DPA's change in calculating the Medicaid payments, the court ruled, fell within the Sec. 3.09 definition of rule since it was a statement of general agency policy. As that policy was not adopted in compliance with the IAPA, it was invalid.

The second case, *Senn Park II* (*Senn Park Nursing Center v. Miller*, 118 Ill. App. 3d 733, 455 N.E.2d 162, 74 Ill. Dec. 132 (1983)), grew out of DPA's attempt to implement the same Medicaid policy change through emergency rulemaking after the circuit court had invalidated the proposed change. Adopting the position long advocated by JCAR, the appellate court held that agency created "emergencies" do not justify bypassing the opportunity for public comment guaranteed by usual rulemaking procedures. DPA's resort to emergency rulemaking, the court noted, was the result of "avoidable administrative failure" to properly promulgate rules complying with the requirements of the IAPA in the first instance. DPA was precluded from relying upon its own mistakes to justify emergency rulemaking.

In *Senn Park Nursing Center v. Miller* (104 Ill. 2d 169, 470 N.E.2d 1029, 83 Ill. Dec. 609 (1984)), the Illinois Supreme Court considered the appeal of the *Senn Park I* and *II* and affirmed both decisions.

In *Senn Park I*, the court considered the appeal of a circuit court decision finding that DPA's inflation update procedure for nursing home reimbursement was invalid. DPA had sent nursing home facilities copies of changes to the State Medicaid plan that included an amended inflation update procedure. DPA published notices of the amended procedure in the newspaper of the widest circulation in each Illinois city with over 50,000 population. The notice was not published in the *Illinois Register*

because it was refused by that publication. The notices did not provide an address where public comments could be submitted. Plaintiffs contended that the amended inflation update procedure was invalid because it was not promulgated in accordance with the rulemaking procedures of the IAPA.

DPA argued that the amended procedure was exempt from the notice and publication requirements by Sec. 5-35(c) of the IAPA because the State Plan was a contractual arrangement with the federal government, and was exempt under the contracts exception of the IAPA. Sec. 5-35(c) states that: “The notice and publication requirements of this Section do not apply to a matter relating solely to agency management...or to public property, loans or contracts.”

After receiving approval from the legislative leaders, JCAR filed an amicus brief with the Illinois Supreme Court arguing that the inflation update procedure did not fall within the contracts exception. The Supreme Court agreed with the appellate court’s interpretation of the contracts exception in which the lower court stated:

We are persuaded that under the IAPA, as under the Federal APA, a matter comes under the contract exception only when contracts are clearly and directly involved.... We believe that with regard to nursing homes, contracts, whether State-Federal or agency-provider, are not clearly and directly involved.... Accordingly, we conclude that the amended inflation update procedure is not a matter relating to contracts within the meaning of the IAPA. (118 Ill. App. 3d at 511)

The Supreme Court also stated that it is clear that the rulemaking procedure is intended to give interested persons an opportunity to submit their views and comments on rulemaking changes and that an agency must consider all submissions received. The court acknowledged that there are certain statutory exceptions to the notice and comment procedures, but that exceptions are of a limited nature and should be appropriately applied.

The court also agreed with the appellate court ruling that the amended inflation update procedure fell within the purview of the IAPA because the Public Aid Code incorporates the IAPA and the Code specifically requires rulemaking pursuant to the IAPA “during the process of establishing the payment rate for skilled nursing and intermediate care services, or when a substantial change in rates is proposed,” in order to provide “an opportunity for public review and comment on the proposed rates prior to their becoming effective”. [305 ILCS 5/5-5.7] (118 Ill. App. 3d at 512) The court found that the amended procedure fell within the definition of “rule” found in the IAPA and thus the failure of DPA to follow the notice and comment procedures required by the IAPA rendered the amended procedure invalid.

Following the decision of the appellate court in *Senn Park I*, DPA promulgated Emergency Rule 4.14221 implementing the amended inflation update procedure pursuant to the IAPA. Plaintiffs sought a declaratory judgment, asking the court to declare Emergency Rule 4.14221 void because there was no “emergency” as that term is defined in the IAPA. On 12/30/80, DPA withdrew the emergency rule. On appeal, the appellate court held that although the rule was withdrawn, the validity of the rule was at issue in order to determine the amount of reimbursement the plaintiffs were entitled to in *Senn Park I*. The appellate court further held that the circuit court had

erred in finding the emergency rule valid because there was no emergency as that term is defined under the IAPA.

- In *Sleeth v. Illinois Department of Public Aid* (125 Ill. App. 3d 847, 466 N.E.2d 703, 81 Ill. Dec. 117 (1984)), the Third District Appellate Court considered an appeal from a DPA decision to terminate disability benefits in 5 cases. The court found that the procedure utilized by the Department (Manual Release No. 83.5), which required applicants who were denied disability benefits to submit proof of disability within 14 days after the filing of appeal, was a “rule” under the IAPA. The IAPA states:

“Rule” means each agency statement of general applicability that implements, applies, interprets, or prescribes law or policy, but does not include (i) statements concerning only the internal management of an Agency and not affecting private rights or procedures available to persons or entities outside the Agency, (ii) informal advisory rulings issued under Section 5-150, (iii) intra-agency memoranda, (iv) the prescription of standardized forms, or (v) documents prepared or filed or actions taken by the Legislative Reference Bureau under Section 5.04 of the Legislative Reference Bureau Act.

DPA contended the Manual Release was merely an intra-office memorandum, not subject to the IAPA. The court reasoned that the memorandum affected private rights and procedures available to persons outside DPA and that this type of statement by an agency is specifically included within the definition of “rule” under the Act. Since the memorandum was not properly promulgated pursuant to the IAPA, the court held the rule invalid and determined that the procedures followed by DPA violated State law.

- In *Kaufman Grain Co., Inc. v. Director, Department of Agriculture* (179 Ill. App. 3d 1040, 534 N.E.2d 1259, 128 Ill. Dec. 654 (1989)), the Fourth District Appellate Court held that DOA had no statute or rule that allowed it to settle disputes between a grain producer and a grain dealer or a grain warehouse. DOA improperly relied on policy that was not properly promulgated as rules in accordance with the IAPA and, therefore, was without authority to adjudicate such grain disputes. The *Kaufman* case is significant for the ruling of the court concerning attorney’s fees. Sec. 10-55 of the IAPA provides that, in any case in which a party has any administrative rule invalidated by a court for any reason, the court shall award the party bringing the action the reasonable expenses of the litigation, including reasonable attorney’s fees. The appellate court ruled that Kaufman was entitled to the award of attorney’s fees it reasonably incurred in this litigation, including the fees incurred in the proceedings before the Department. The court stated that Sec. 10-55 of the IAPA gives those subject to regulation an incentive to oppose doubtful rules where compliance would otherwise be less costly than litigation. Therefore, the court awarded fees for the proceedings before DOA, as well as fees incurred in administrative review proceedings, noting that proceedings before an administrative agency are quite often more costly and time consuming than administrative review proceedings. The *Kaufman* case illustrates trends of the courts to rule unfavorably against agencies that have not promulgated their policies properly under the IAPA. The *Kaufman* decision specifically cites *Senn Park* and further strengthens the precedent it established. Award of attorney's fees was further

strengthened in *Citizens Org. Proj. v. Dept. of Nat. Res.*, (89 Ill. 2nd 593, 725 N.E.2d 195, 244 Ill. Dec 896(2000)), in which the Supreme Court affirmed the award of attorney's fees and litigation expenses where a citizen group obtained invalidation of a DNR rule governing a DNR permit decision.

- In *Coronet Insurance Company v. John E. Washburn, Director of Insurance of the State of Illinois* (201 Ill. App. 3d 633, 558 N.E.2d 1307, 146 Ill. Dec. 973 (1990)), the First District Appellate Court of Illinois held that an administrative agency may enact rules and regulations as limited by the authorizing statutory language; that an administrative rule carries with it the same presumption of validity as the statute; and a rule that is consistent with the spirit of the statute and furthers its purpose will be sustained. The appellate court also ruled that DOI's failure to give at least 45 days notice of a proposed rule to the general public did not constitute violation of the IAPA, since the Act provides that changes in the text of a proposed rule may be made during the First Notice period and that such changes need not be published again prior to submission to JCAR.
- In *CIPS v. Illinois Commerce Commission* (268 Ill. App. 3d 471, 644 N.E. 2d 817, 206 Ill. Dec. 49 (1994)), the Fourth District Appellate Court ruled that JCAR did not create an impermissible filing prohibition when it informed ICC it would lift its filing prohibition on a proposed rule formulating rental rates for cable TV attachments to utility poles if the ICC removed allocation of the portion of pole neutral space to cable television.

RECENT JUDICIAL ACTION AND LITIGATION

- In *Weyland v. Manning* (309 Ill. App. 3d 542, 723 N.E.2d 387, 243 Ill. Dec. 355 (2000)), plaintiffs filed an action contesting a rule adopted by the Department of Natural Resources establishing a restricted boating zone on Griswold Lake. One element at issue was the adequacy of the Second Notice filed by DNR with JCAR. The Second District Appellate Court held that DNR complied with JCAR rule requirements that it list and analyze all comments concerning the rule and that its failure to list in the Second Notice persons who had requested a public hearing did not invalidate the rule.
- Payday/Predatory Lending Rules: Two similar topics, the regulation of short term (payday or cash for car title) loans and high risk mortgage loans, involved rules ultimately adopted by the Department of Financial Institutions and/or Office of Banks and Real Estate:

Payday: After JCAR Objection and after a Filing Prohibition expired, DFI adopted rules regulating the payday loan/cash for car title industries that were immediately challenged by *Southwest Development Corp, et al., v. Vega* (Circuit Court of Cook County; No. 01-CH-08906). The trial judge ruled in favor of DFI, upholding the rules. An appeal is pending.

Predatory: After JCAR review of 7 rules regulating high risk mortgage activity and OBRE adoption of the rules, *Illinois Association of Mortgage Brokers v. OBRE* was filed in the U.S. District Court, Northern District of Illinois (No. 01-C-5151). The suit is solely against OBRE, although DFI filed almost identical rules as well, and challenges the rules on the basis that federal law preempts State regulation in this matter. The case has been remanded to the district court after the U.S. Seventh Circuit Court of Appeals (No. 02-1018) ruled elements of the Office's rules may be preempted under federal law. OBRE and the Association are in settlement discussions.

- *Corey H. v. Board of Education of City of Chicago* (No. 92-C-3409, U.S. District Court for the Northern District of Illinois, Eastern Division). In 1992, disabled students brought an action against the Chicago Board of Education and State Board of Education alleging systemic failures to educate children with disabilities in the least restrictive environment (LRE), as required by the federal Individuals with Disabilities Education Act (IDEA). SBE and CBE entered into a settlement agreement with the plaintiffs. Under the settlement agreement, Judge Gettleman ordered SBE to change its policy on certification structure and standards for special education teachers through peremptory rulemaking. SBE filed 2 peremptory rulemakings to change special education teacher certification endorsement and create common core standards for all teachers. The first peremptory rule (titled Certification; 23 Ill. Adm. Code 25; 24 Ill. Reg. 16109) was objected to by JCAR on 11/14/00. SBE refused to withdraw the peremptory rule, stating it was not in a position to do so because it was under a federal judge's order. The rule was then suspended by JCAR on 2/21/01. The second peremptory rule (Standards for Certification in Special Education; 23 Ill. Adm. Code 28; 24 Ill. Reg. 16738) was objected to and suspended by JCAR on 1/9/01. SBE did not respond. On 2/27/01, Judge Gettleman ordered SBE to implement both rulemakings, regardless of the JCAR suspensions.

Pursuant to IAPA requirements, SJR 26 was introduced in the General Assembly to continue the 2 suspensions. (Sec. 5-125 of the IAPA states that if a joint resolution passes both houses of the General Assembly within the 180 days of the JCAR suspension, the rule will be considered repealed and the Secretary of State must immediately remove the rule from the collection of the effective rules.) SJR 26 passed the Senate on 5/21/01 with a vote of 56-0-0 and passed the House on 5/31/01 with a vote of 117-0-0. This was the first time a joint resolution of this nature has passed both houses of the GA. As directed by Judge Gettleman, SBE implemented the settlement order as agency policy outside rule.

Downstate special education teachers and students then filed a motion to intervene, to allow them input into the teacher certification policies that will be effective statewide (*Reid L. v. Illinois State Board of Education and Corey H.*, No. 01-C-4180). Judge Gettleman denied the *Reid* request. The U.S. Seventh Circuit Court of Appeals affirmed the district court. In the interim, the G.A. adopted PA 92-79 addressing many of these issues. Further litigation may result.

HISTORY OF GENERAL RULEMAKING BY AGENCY 1978 THROUGH 2002

AGENCY	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	00	01	02
Administrative Rules, Joint Committee on	3	5	1	1	1	1	-	-	3	5	-	-	-	-	1	7	2	-	-	-	-	-	-	-	-
Aging, Department on	5	1	6	6	4	4	6	3	2	1	3	4	5	2	5	2	5	3	6	7	2	1	2	1	5
Agriculture, Department of [16]	14	21	14	16	24	18	41	15	11	26	21	16	7	2	18	17	13	22	15	14	17	18	7	13	13
Attorney General	3	1	2	-	3	2	3	2	2	2	3	-	1	1	1	-	-	1	-	-	3	2	3	-	2
Attorney General's Ethics Commission	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	1	-
Auditor General	7	5	2	1	4	1	3	1	-	-	-	1	2	-	-	1	-	2	-	-	-	3	-	-	-
Banking Board of Illinois, State	-	-	-	-	-	-	-	-	-	-	2	-	-	-	-	-	-	-	-	-	1	-	-	-	-
Banks and Real Estate, Commissioner of [7]	3	6	6	7	7	1	1	2	7	6	10	5	5	12	8	2	2	7	11	10	7	6	11	3	7
Building Commission, Illinois	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	3	-	-
Capital Development Board	2	1	3	-	3	-	2	9	4	6	3	2	-	-	2	1	-	2	11	8	6	2	4	8	1
Carnival-Amusement Safety Board	-	-	-	-	-	-	-	-	2	3	-	2	1	-	2	1	1	-	-	2	-	1	-	1	-
Central Management Services, Dept. of [2]	11	9	16	16	13	16	18	10	14	11	11	11	14	14	19	14	6	16	15	12	11	16	19	18	29
Children & Family Services, Department of	2	2	60	1	26	10	23	14	22	3	9	5	7	6	12	13	16	22	23	20	13	8	22	13	20
Civil Service Commission	-	-	-	2	-	-	2	-	-	-	-	-	-	-	-	-	1	-	-	-	-	-	-	-	-
Civil Service Merit Board, University	-	-	-	3	-	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Civil Service System, State Universities	2	2	-	-	-	-	2	1	1	1	2	1	-	-	-	1	-	1	-	-	-	-	-	-	-
Comm. Dev. Finance Corp. (Treas)	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Commerce & Community Affairs, Dept. of [15]	1	1	3	1	8	4	20	29	29	18	17	17	19	16	12	8	7	4	5	3	4	5	8	7	7
Commerce Commission	17	11	19	10	21	19	43	22	20	86	24	26	14	16	16	16	16	10	10	14	12	6	15	16	25
Community College Board	-	1	-	-	1	2	3	2	2	2	5	5	3	2	3	2	4	-	5	2	-	3	1	1	2
Comptroller	1	2	4	3	4	4	3	1	5	3	4	2	2	-	1	2	3	-	1	2	1	1	3	3	3
Comptroller's Merit Commission	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	1	1	-	-	-	-	-	-	-
Cook County Local Records Commission (SOS)	-	-	-	-	-	-	-	-	1	-	-	1	-	-	-	-	-	-	-	-	-	-	-	-	-
Corrections, Department of	82	23	38	24	15	66	-	1	10	8	5	8	7	4	5	6	-	4	4	6	4	1	-	2	4
Court of Claims	-	-	-	-	-	-	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	1	-	-
Criminal Justice Information Authority	1	2	-	-	-	-	-	1	1	2	-	1	2	-	2	2	-	-	1	1	1	-	1	4	-
Deaf and Hard of Hearing Commission	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	1
Debt Collection Board	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	1	-	-	-	2	-
Development Finance Authority	-	-	-	-	-	-	-	-	4	1	-	-	-	-	2	-	-	-	-	-	-	-	-	-	-
Developmental Disabilities Planning Council	-	-	-	-	-	-	-	-	-	-	-	-	-	-	2	-	-	-	-	-	-	-	-	-	-
Dry Cleaners Emergency Response Trust Fund	-	-	-	-	-	-	-	-	-	-	-	-	-	-	2	-	-	-	-	-	-	-	-	-	-
Education, State Board of	3	4	9	8	3	7	5	12	30	12	9	10	10	5	9	10	10	10	7	6	18	14	4	22	14
Educational Facilities Authority [19]	-	-	1	-	2	3	2	1	4	2	-	1	-	-	-	1	-	1	1	1	-	1	-	1	-
Educational Labor Relations Board	-	-	-	-	-	-	4	3	-	-	2	5	-	-	2	-	-	-	-	-	-	-	-	1	-
Educational Opportunity, Consortium for	-	-	-	-	-	-	-	-	1	-	-	-	2	1	-	-	-	-	-	-	-	-	-	-	-

HISTORY OF GENERAL RULEMAKING BY AGENCY 1978 THROUGH 2002

AGENCY	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	00	01	02
Elections, State Board of	6	1	8	3	7	3	4	1	-	3	-	7	3	2	-	2	1	1	2	5	5	6	1	-	2
Emergency Management Agency [3]	-	-	-	2	9	7	-	-	3	2	2	-	-	-	1	2	4	-	-	1	-	-	-	4	-
Employment Security, Department of	-	-	-	-	-	-	3	13	10	5	19	16	11	14	8	13	8	3	2	5	1	1	4	2	1
Environmental Protection Agency	7	12	10	16	18	20	21	10	8	14	16	8	6	4	14	4	3	6	5	11	6	5	7	8	3
Experimental Organ Transplantation Proced. Bd.	-	-	-	-	-	-	-	1	1	-	1	1	-	-	-	-	-	-	-	-	-	-	-	-	-
Export Development Authority	-	-	-	-	-	-	-	1	1	1	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Farm Development Authority	-	-	-	-	1	1	2	1	2	3	2	-	-	-	-	1	1	-	-	-	1	1	1	2	1
Financial Institutions, Department of	1	10	8	3	-	3	9	4	2	3	4	1	2	1	4	3	4	4	1	3	5	2	4	1	8
Fire Marshal	1	2	1	1	7	3	5	3	3	5	1	4	4	5	6	1	3	6	5	5	6	-	3	3	6
Gaming Board	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	2	1	3	2	1	2	2
Governor	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	1	1	-	-	-
Governor's Ethics Commission	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	1	-	-
Governor's Purchased Care Review Board	1	6	2	1	-	1	1	1	-	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Guardianship & Advocacy Commission	-	-	2	1	2	2	1	3	-	-	-	-	1	-	1	-	-	-	-	-	-	-	6	-	1
Health Facilities Authority	5	2	-	1	-	-	-	-	-	-	-	-	-	-	-	-	1	-	4	-	-	-	-	-	-
Health Facilities Planning Board	-	1	-	-	-	-	2	1	9	3	3	7	-	3	4	5	4	1	2	5	3	7	14	3	4
Hearing Aid Consumer Protection Board	-	-	-	-	-	-	-	-	-	1	-	1	-	-	-	-	-	-	-	-	-	-	-	-	-
Higher Education CPO	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	2	-	-	-	-
Higher Education, Board of	-	3	2	5	-	-	20	5	3	-	1	6	-	-	1	1	1	-	-	-	-	1	4	-	-
Historic Preservation Agency	-	-	-	-	-	-	-	-	-	-	-	-	1	2	2	-	-	-	1	1	-	-	1	-	1
Housing Development Authority	-	-	1	-	-	3	3	5	1	1	1	1	3	2	5	1	3	1	-	9	3	2	1	3	1
Human Rights Commission [17]	2	3	-	1	1	2	2	-	1	-	-	-	-	-	-	-	-	-	1	1	-	-	-	-	-
Human Rights, Department of	-	-	1	5	4	3	1	-	1	-	-	-	-	-	1	1	3	1	1	2	1	1	1	1	2
Human Services, Department of [11][1][18]	23	15	12	13	12	29	37	26	65	51	34	30	40	30	25	34	27	27	38	24	106	69	46	39	34
Industrial Commission	4	1	3	2	3	1	2	7	2	-	-	-	6	1	2	-	-	4	-	-	-	-	-	-	-
Insurance, Department of	15	14	17	13	13	4	25	9	11	9	12	13	13	12	13	15	6	19	13	13	23	9	18	15	14
Investments, Illinois State Board of	-	3	1	-	1	2	-	-	-	-	-	1	-	-	-	-	-	-	-	-	-	-	-	-	-
Labor Relations Board [22]	-	-	-	-	-	-	8	2	16	-	8	-	8	-	-	4	-	-	5	-	-	-	-	4	-
Labor, Department of	5	6	3	7	8	8	5	3	3	1	2	1	3	2	9	-	1	4	2	3	1	1	12	3	-
Law Enforcement Commission	1	-	-	2	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Law Enforcement Training & Stand. Bd. [20]	-	-	-	-	-	4	1	-	2	1	-	2	2	1	1	-	-	1	-	-	1	-	-	-	-
Legislative Information System	1	-	2	-	2	1	-	-	-	-	-	-	1	-	-	-	-	-	-	-	-	-	2	-	-
Legislative Space Needs Commission	-	-	-	-	-	-	-	-	-	-	-	-	-	-	2	-	-	-	-	-	-	-	-	-	-
Lieutenant Governor	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	1	1	-	-	1	1	-	-	1
Liquor Control Commission	2	-	-	-	-	1	-	-	-	-	1	-	-	-	-	-	-	1	-	1	1	3	-	2	2

HISTORY OF GENERAL RULEMAKING BY AGENCY 1978 THROUGH 2002

AGENCY	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	00	01	02
Local Government Records Commission	-	1	-	-	-	-	-	-	-	-	-	-	-	1	-	-	-	-	-	-	-	-	-	-	-
Lottery, Department of	-	2	-	-	-	-	-	-	2	-	2	-	-	-	3	-	2	1	1	-	2	-	1	1	1
Medical District (Center) Commission	-	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Military Affairs, Department of [5]	-	-	-	-	-	-	-	1	-	-	2	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Mississippi River Parkway Commission	-	-	-	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Motor Vehicle Theft Prevention Council	-	-	-	-	-	-	-	-	-	-	-	-	-	-	2	2	-	-	-	-	-	-	-	-	-
Natural Resources, Department of [10]	80	93	81	116	41	41	41	44	84	36	24	58	48	60	73	34	25	55	31	35	60	40	25	52	45
Nature Preserves Commission	-	-	-	-	-	1	-	-	-	-	-	-	-	-	-	1	1	-	-	-	-	-	-	-	-
Northeastern Illinois Planning Commission	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	1	-	-	1	-	-	1	-	-
Nuclear Safety, Department of	-	-	1	2	3	3	4	3	19	7	7	8	8	2	10	15	8	5	11	5	12	8	5	6	8
Obsolete Boards & Commissions	9	4	5	12	2	-	-	10	2	3	3	1	1	3	3	3	2	5	-	3	-	-	5	-	-
Obsolete Higher Ed Boards (BOR, BOG) [13]	-	-	-	2	2	1	-	1	-	-	1	3	-	-	-	-	-	-	-	-	-	-	-	-	-
Pollution Control Board	18	11	18	13	18	23	21	32	43	53	73	71	54	36	29	24	66	11	34	31	17	7	30	12	17
Prairie State 2000 Authority	-	-	-	-	-	-	-	-	2	-	-	-	-	-	1	-	-	-	-	-	-	-	-	-	-
Prisoner Review Board	2	-	-	-	1	-	-	1	-	-	2	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Procurement Policy Board	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Professional Regulation, Department of [6]	11	11	22	15	16	15	26	17	10	14	14	15	7	13	16	19	17	13	17	19	26	28	22	10	22
Property Tax Appeal Board	-	-	-	-	-	-	-	1	-	-	-	1	-	-	-	-	-	-	1	3	1	1	-	-	-
Public Aid, Department of	46	56	47	66	40	86	67	94	82	87	107	67	94	78	84	65	43	75	53	39	30	19	23	30	43
Public Health, Department of [21]	42	43	55	44	92	91	53	25	44	27	50	45	48	28	46	53	28	29	30	46	38	18	41	30	35
Racing Board	10	14	19	10	22	9	7	13	14	9	11	5	40	17	20	25	27	37	16	23	4	4	17	20	16
Records Commission, State	-	-	-	-	-	-	-	-	-	-	-	1	-	-	-	-	-	-	-	-	-	-	-	-	-
Retirement System, State Employees	2	3	5	3	4	1	2	3	-	-	1	-	2	1	1	-	-	-	1	2	2	1	2	1	1
Retirement System, State Universities	1	-	-	-	-	1	-	-	-	-	-	1	1	-	-	-	-	-	1	3	-	2	-	1	-
Retirement System, Teachers	2	-	-	-	-	-	-	2	-	-	1	-	1	1	2	1	1	1	1	2	5	1	2	1	3
Revenue, Department of	11	16	24	45	14	11	9	7	24	19	20	24	35	25	9	20	20	21	32	12	22	11	77	51	40
Rural Bond Bank	-	-	-	-	-	-	-	-	-	-	-	-	3	-	1	-	-	-	-	-	-	-	-	-	-
Savings Institutions, Board of [12]	-	-	-	-	-	-	-	-	-	-	-	-	-	2	-	-	-	-	-	1	-	-	-	-	-
Secretary of State	15	21	12	26	14	31	20	19	8	18	30	31	21	14	13	21	13	14	21	27	16	10	14	13	26
Sex Offender Management Board	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	2
Southern Illinois University Board of Trustees	-	-	-	-	-	-	-	-	-	-	-	1	-	-	-	-	-	-	-	-	-	-	-	-	-
Specialized Care for Children, Division of	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	1	-	1	1	-	-
Sports Facilities Authority	-	-	-	-	-	-	-	-	-	-	2	-	-	-	-	-	-	-	-	-	-	-	-	-	-
State Mandates Board of Review	-	-	-	-	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
State Police Merit Board [8]	2	2	1	-	1	1	4	1	2	2	2	2	-	1	2	1	1	1	2	3	1	1	1	1	3

HISTORY OF GENERAL RULEMAKING BY AGENCY

1978 THROUGH 2002

AGENCY	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	00	01	02
State Police, Department of [14]	2	-	1	-	1	2	2	1	2	1	4	-	2	1	3	2	-	1	4	2	4	-	4	5	3
State's Attorneys Appellate Prosecutor [4]	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Student Assistance Commission [9]	1	3	4	11	4	2	1	14	10	13	5	9	1	5	10	15	13	8	19	35	15	8	15	10	8
Toll Highway Authority, Illinois State	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	2	-	-	1	1	-	1	2	-	1
Transportation, Department of [10]	13	13	13	17	5	5	10	16	23	16	25	18	15	32	21	28	18	22	12	13	23	17	19	16	22
Travel Control Board, Governor's	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	1	-	-	-	-
Travel Control Board, Higher Education	-	1	1	1	2	-	-	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Travel Control Board, Legislative	1	1	-	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	1	-	-	-	-	-	-
Travel Regulation Council	-	-	-	-	-	-	-	-	-	-	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Treasurer	1	1	-	-	-	1	1	-	-	-	-	4	-	2	5	7	-	-	-	-	4	-	3	2	2
U of I Board of Examiners (CPA Licensure)	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	1	-	1	-	-	-	-	-
University of Illinois, Board of Trustees	-	-	-	1	-	1	1	1	1	-	2	2	-	-	1	1	1	1	-	4	-	-	1	-	-
Veterans' Affairs, Department of	1	2	2	2	-	1	1	-	5	7	-	-	-	-	5	-	-	1	-	-	-	-	12	1	1
TOTALS	502	475	568	563	510	583	604	532	696	614	627	589	586	483	583	537	440	487	488	512	554	384	553	467	520

This table illustrates the number of rulemakings commenced by each agency during the calendar year.

[1] DASA, once a division of Dangerous Drugs Commission, became a separate agency in 1984. [2] The Depts. of Personnel and Administrative Services were combined in 1982 and the name was changed to Dept. of Central Management Services. [3] Includes Emergency Services & Disaster Agency, which was renamed IEMA in 1992. [4] Includes State's Attorneys Appellate Service Commission. [5] The Military & Naval Department became the Department of Military Affairs in 1988. [6] The Department of Registration & Education became DPR in 1988. [7] Commissioner of Savings & Loan Association became the Commissioner of Savings & Residential Finance in 1990 and combined with the Commissioner of Banks and Trusts to become the Commissioner of Banks and Real Estate in 1996. The new office also absorbed the real estate licensing functions of DPR. [8] Until 1986, the Dept. of Law Enforcement Merit Board. [9] The State Scholarship Commission became ISAC in 1989. [10] In 1995, DCC, ENR (previously, Institute of Natural Resources), M&M, AMLRC, and DOT Waterways Division were merged into the Department of Natural Resources. [11] July 1997, DHS was formed from DASA, DORS, DMHDD, and specific programs from DPA and DPH. [12] In 1996, the Savings and Loan Advisory Board became the Board of Savings Institutions. [13] In 1996, the Board of Regents/Governors were disbanded in favor of individual boards of trustees. Also includes obsolete Trustees of State CC of E. St. L. [14] Prior to 1985, Department of Law Enforcement. [15] Prior to 1979, Department of Local Government Affairs. [16] Includes State Fair Agency (prior to 1979). [17] Absorbed Fair Employment Practices Commission in 1980. [18] In 1984, the Dangerous Drugs Commission was absorbed by DASA, which was then absorbed by DHS in 1997. [19] IEFA absorbed the Higher Education Loan Authority in c. 1988. [20] In 1993, the Local Gov. Law Enforcement Officers Training Board was renamed the Law Enforcement Training & Standards Board. [21] HCCC absorbed Health Finance Authority (1979-82) duties in 1984. HCCC was abolished in 2002 and its duties taken by DPH. [22] In 2000, the Local Labor Relations and State Labor Relations Boards were combined into the Illinois Labor Relations Board.

HISTORY OF EMERGENCY RULEMAKING BY AGENCY 1978 THROUGH 2002

AGENCY	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	00	01	02
Administrative Rules, Joint Committee on	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Aging, Department on	4	1	1	1	1	-	-	-	-	-	-	1	-	3	5	1	1	2	1	-	-	-	-	-	1
Agriculture, Department of [16]	1	3	2	-	-	-	1	2	1	1	2	1	-	1	-	3	1	1	1	1	-	1	-	3	1
Attorney General	-	-	-	-	-	-	-	1	-	-	-	-	-	-	-	-	-	-	-	-	1	-	-	-	-
Banking Board of Illinois, State	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	1	-	-	-	-	-	-	-
Banks and Real Estate, Commissioner of [7]	1	1	4	1	1	-	-	1	3	1	4	-	1	1	3	-	1	4	-	-	5	1	10	4	3
Capital Development Board	-	-	2	-	-	-	-	1	-	-	-	-	-	-	-	-	-	-	-	1	3	2	-	-	-
Carnival-Amusement Safety Board	-	-	-	-	-	-	-	-	1	-	-	1	1	-	1	-	-	-	-	-	-	-	-	-	-
Central Management Services, Department of [2]	9	5	4	3	5	3	13	6	6	4	8	3	4	3	7	-	2	1	8	4	6	6	4	3	7
Children & Family Services, Department of	-	-	2	-	4	1	-	-	1	1	-	-	2	4	1	2	4	6	-	7	1	1	5	4	3
Commerce & Community Affairs, Department of [15]	1	-	-	-	-	-	-	6	5	2	1	8	2	2	1	3	-	-	-	1	1	2	4	2	1
Commerce Commission	1	1	5	-	2	5	3	1	5	3	4	2	-	1	1	-	2	-	2	4	6	-	8	5	1
Community College Board	-	-	-	-	-	1	2	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	1	-	-
Comptroller	-	2	1	-	-	-	-	-	-	-	-	-	-	-	-	-	1	1	-	-	-	-	1	-	1
Corrections, Department of	21	8	4	2	15	-	-	-	-	-	-	-	3	-	1	4	-	-	1	4	-	-	-	-	-
Criminal Justice Information Authority	-	2	-	-	-	-	-	1	-	1	-	1	-	-	-	-	-	-	1	1	1	-	1	-	-
Dangerous Drugs Advisory Council	-	-	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Development Finance Authority	-	-	-	-	-	-	-	-	2	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Dry Cleaners Emergency Response Trust Fund	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Education, State Board of	2	-	3	1	-	3	-	9	5	2	-	2	2	-	-	-	1	1	2	-	8	1	2	2	-
Educational Finance Authority	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	1	-	-	-
Educational Labor Relations Board	-	-	-	-	-	-	4	1	-	-	1	1	-	-	1	-	-	-	-	-	-	-	-	-	-
Educational Opportunity, Consortium For	-	-	-	-	-	-	-	-	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Elections, State Board of	3	1	4	1	2	1	2	-	-	-	-	-	1	-	-	1	-	1	1	-	1	2	1	-	-
Emergency Management Agency [3]	-	-	-	-	1	-	-	-	-	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Employment Security, Department of	-	-	-	-	-	-	3	-	-	-	4	5	1	-	2	2	2	1	-	-	-	-	1	1	-
Environmental Protection Agency	2	3	3	2	-	-	2	2	2	3	-	1	-	-	1	-	-	1	-	2	-	-	-	-	-
Experimental Organ Transplantation Proced. Bd.	-	-	-	-	-	-	-	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Export Development Authority	-	-	-	-	-	-	-	-	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Farm Development Authority	-	-	-	-	1	1	1	2	3	-	-	-	-	-	-	-	-	-	-	-	-	1	-	-	-
Financial Institutions, Department of	-	1	2	2	-	-	-	1	1	1	-	-	1	-	1	1	-	-	1	-	3	1	-	-	-
Fire Marshal	-	1	1	-	2	1	2	-	2	-	-	3	1	-	-	2	-	-	-	-	1	-	-	-	-
Gaming Board	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	1	1	1	-	-	1
Governor	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Governor's Purchased Care Review Board	1	4	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Guardianship and Advocacy Commission	-	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Health Coordinating Council, Statewide	3	-	-	1	-	-	-	-	-	-	-	-	-	-	2	-	-	-	-	-	-	-	-	-	-
Health Facilities Planning Board	-	-	-	-	-	-	-	-	-	-	-	-	-	-	4	1	-	2	-	1	-	1	-	-	-
Health Finance Authority	-	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Higher Education CPO	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	2	-	-	-	-

HISTORY OF EMERGENCY RULEMAKING BY AGENCY

1978 THROUGH 2002

AGENCY	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	00	01	02
Higher Education Loan Authority, Independent	-	-	-	-	-	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Higher Education, Board of	-	1	-	1	-	-	1	-	-	-	-	1	-	-	-	-	-	-	-	-	-	2	-	-	-
Housing Development Authority	-	-	-	-	-	1	1	1	-	1	-	-	3	-	2	1	2	1	-	3	-	-	-	1	1
Human Rights Commission [17]	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	1	-	-	-	-	-	-
Human Rights, Department of	-	-	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Human Services, Department of [11][1]	1	1	-	1	3	1	1	1	5	1	1	4	2	3	14	31	1	3	2	2	8	22	29	16	9
Industrial Commission	-	-	1	2	2	-	2	2	2	-	-	-	4	-	-	-	-	-	-	-	-	-	-	-	-
Insurance, Department of	1	-	4	2	2	3	-	1	5	-	-	1	-	-	1	4	-	1	-	3	-	1	3	-	2
Investments, Illinois State Board of	-	1	-	-	-	-	-	-	-	-	-	1	-	-	-	-	-	-	-	-	-	-	-	-	-
Labor Relations Board	-	-	-	-	-	-	8	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Labor, Department of	-	-	1	3	-	3	3	2	-	-	-	-	1	1	-	1	1	-	-	-	-	-	1	-	-
Law Enforcement Commission	2	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Legislative Information System	1	-	1	-	1	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Lieutenant Governor	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	1	-	-	-	-
Liquor Control Commission	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Local Gov. Law Enf. Officers Training Bd.	-	-	-	-	-	1	-	-	1	-	-	-	-	-	1	-	-	-	-	-	-	-	-	-	-
Lottery, Department of	-	-	-	-	-	-	-	-	2	-	-	-	-	-	-	-	-	-	-	-	1	-	-	-	-
Medical Center Commission	-	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Motor Vehicle Theft Prevention Council	-	-	-	-	-	-	-	-	-	-	-	-	-	1	1	-	-	-	-	-	-	-	-	-	-
Natural Resources, Department of [10]	21	18	14	14	6	5	1	7	4	1	7	6	3	6	6	5	6	4	-	1	4	5	1	5	4
Nuclear Safety, Department of	-	-	-	-	1	-	2	1	1	1	-	-	-	-	-	2	1	2	1	1	6	-	-	2	2
Obsolete Boards & Commissions	2	1	-	-	-	-	-	-	1	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Pollution Control Board	2	1	1	3	1	1	3	3	2	-	1	-	1	-	-	3	1	1	1	1	-	-	-	-	-
Prairie State 2000 Authority	-	-	-	-	-	-	-	-	2	-	-	-	-	-	1	-	-	-	-	-	-	-	-	-	-
Prisoner Review Board	2	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Professional Regulation, Department of [6]	3	3	2	1	5	5	6	1	1	3	2	6	-	5	2	2	-	1	1	4	3	-	2	-	3
Public Aid, Department of	19	14	4	3	4	2	6	6	9	18	17	15	18	19	27	17	6	29	15	22	13	10	6	10	25
Public Health, Department of [18]	12	12	11	1	15	2	2	2	3	1	18	3	13	8	4	24	7	6	13	10	1	3	2	1	3
Racing Board	6	7	2	-	2	2	1	2	-	-	1	1	-	2	1	3	1	4	1	-	-	3	-	-	3
Retirement System, State Employees	-	-	3	-	1	-	1	1	-	-	-	-	-	-	-	-	-	-	-	2	-	-	-	-	1
Retirement System, State Universities	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	1	-	-	-	-	-
Retirement System, Teachers	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	1	-	-	2	3	-	-	-	-
Revenue, Department of	-	1	9	1	3	-	1	-	2	-	4	2	1	3	2	5	-	3	2	1	4	5	6	5	3
Rural Bond Bank	-	-	-	-	-	-	-	-	-	-	-	-	3	-	1	-	-	-	-	-	-	-	-	-	-
Secretary of State	3	2	-	1	1	3	3	6	2	-	-	-	1	-	3	2	5	2	1	7	4	3	7	10	4
Specialized Care for Children, Division of	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	1	-	-
Sports Facilities Authority	-	-	-	-	-	-	-	-	-	-	2	-	-	-	-	-	-	-	-	-	-	-	-	-	-
State Mandates Board of Appeals	-	-	-	-	1	-	-	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
State Police Merit Board [8]	3	-	1	-	-	-	2	-	-	-	-	1	-	-	1	-	-	-	1	-	-	-	1	-	-
State Police, Department of [14]	1	-	-	-	-	-	-	-	1	-	-	-	1	1	1	-	-	-	2	-	-	-	-	3	2

HISTORY OF EMERGENCY RULEMAKING BY AGENCY 1978 THROUGH 2002

AGENCY	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	00	01	02
Student Assistance Commission [9]	-	-	-	1	2	1	-	-	2	2	1	-	1	5	2	3	1	1	2	-	1	-	-	-	-
Toll Highway Authority, Illinois State	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	2	-	1
Transportation, Department of [10]	1	2	2	1	-	-	1	1	1	2	-	-	-	-	1	-	1	-	-	1	1	-	5	-	-
Travel Control Board, Legislative	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Travel Regulation Council	-	-	-	-	-	-	-	-	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Treasurer	-	-	-	-	-	-	-	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
University of Illinois, Board of Trustees	-	-	-	1	-	1	-	-	-	-	-	-	-	-	-	2	-	1	-	-	4	-	1	-	-
Veterans' Affairs, Department of	-	-	-	-	-	-	-	-	1	-	-	-	-	-	-	-	1	-	-	-	-	-	-	-	-
TOTALS	133	100	97	50	84	49	78	74	87	51	78	71	71	72	101	129	47	79	70	90	111	82	100	70	79

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[1] DASA, once a division of Dangerous Drugs Commission, became a separate agency in 1984. [2] The Depts. of Personnel and Administrative Services were combined in 1982 and the name was changed to Dept. of Central Management Services. [3] Includes Emergency Services & Disaster Agency, which was renamed IEMA in 1992. [4] Includes State's Attorneys Appellate Service Commission. [5] The Military & Naval Department became the Department of Military Affairs in 1988. [6] The Department of Registration & Education became DPR in 1988. [7] Commissioner of Savings & Loan Associations became the Commissioner of Savings & Residential Finance in 1990 and combined with the Commissioner of Banks and Trusts to become the Commissioner of Banks and Real Estate in 1996. The new office also absorbed the real estate licensing functions of DPR. [8] Until 1986, the Dept. of Law Enforcement Merit Board. [9] The State Scholarship Commission became ISAC in 1989. [10] In 1995, DOC, ENR (previously, Institute of Natural Resources), M&M, AMLRC, and DOT Waterways Division were merged into the Department of Natural Resources. [11] July 1997, DHS was formed from DASA, DORS, DMHDD, and specific programs from DPA and DPH. [12] In 1996, the Savings and Loan Advisory Board became the Board of Savings Institutions. [13] In 1996, the Board of Regents/Governors were disbanded in favor of individual boards of trustees. [14] Prior to 1985, Department of Law Enforcement. [15] Prior to 1979, Department of Local Government Affairs. [16] Includes State Fair Agency (prior to 1979). [17] Absorbed Fair Employment Practices Commission in 1980. [18] HCCC absorbed Health Finance Authority (1979-82) duties in 1984. HCCC was abolished in 2002 and its duties taken by DPH. [22] In 2000, the Local Labor Relations and State Labor Relations Boards were combined into the Illinois Labor Relations Board.

HISTORY OF PEREMPTORY/EXEMPT RULEMAKING BY AGENCY 1978 THROUGH 2002

AGENCY	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	00	01	02
Aging, Department of	-	-	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Agriculture, Department of [16]	-	-	-	-	-	-	-	9	10	9	7	5	5	4	6	4	7	5	5	6	4	2	5	3	2
Central Management Services, Department of [2]	-	-	-	-	-	-	-	-	6	7	7	3	4	2	2	1	3	6	4	5	11	3	6	3	2
Children & Family Services, Department of	-	-	-	1	-	-	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Commerce Commission	-	-	-	-	1	-	-	-	-	-	2	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Comptroller	-	-	-	-	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Corrections, Department of	9	-	-	1	3	1	-	-	-	-	-	-	-	-	-	2	-	-	-	-	-	-	-	-	-
Education, State Board of	2	1	7	-	-	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	2	-	-
Employment Security, Department of	-	-	-	-	-	-	-	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Department of Human Services [11][1]	-	-	-	-	-	-	-	-	-	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Labor, Department of	-	-	-	-	-	-	-	-	-	1	1	-	-	-	-	-	-	-	-	-	-	-	-	-	1
Natural Resources, Department of [10]	-	-	-	-	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Nature Preserves Commission	-	-	-	-	-	-	-	2	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Pollution Control Board	-	1	4	8	7	10	11	9	14	10	-	-	-	21	25	20	30	20	17	19	22	19	24	13	14
Public Aid, Department of	12	6	5	31	6	3	9	2	3	4	2	1	1	1	1	1	-	1	1	-	-	-	-	-	-
Public Health, Department of	-	-	-	-	1	-	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Retirement System, State Employees	-	-	-	-	-	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Revenue, Department of	-	-	-	-	-	-	-	-	-	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Transportation, Department of [10]	1	-	-	-	-	-	-	-	-	-	-	1	-	-	-	-	-	-	-	-	-	-	-	-	-
Travel Regulation Council	-	-	-	-	-	-	-	-	-	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Treasurer	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Obsolete Boards & Commissions	-	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
TOTALS	24	9	17	41	21	16	22	23	33	33	19	10	10	28	34	29	40	32	27	30	37	24	37	19	19

This table illustrates the number of rulemakings commenced by each agency during the calendar year.

[1] DASA, once a division of Dangerous Drugs Commission, became a separate agency in 1984. [2] The Depts. of Personnel and Administrative Services were combined in 1982 and the name was changed to Dept. of Central Management Services. [3] Includes Emergency Services & Disaster Agency, which was renamed IEMA in 1992. [4] Includes rules of the Institute of Natural Resources, which predated the Department. [5] The Military & Naval Department became the Department of Military Affairs in 1988. [6] The Department of Registration & Education became DPR in 1988. [7] Commissioner of Savings & Loan Associations became the Commissioner of Savings & Residential Finance in 1990. [8] Until 1986, the Dept. of Law Enforcement Merit Board. [9] The State Scholarship Commission became ISAC in 1989. [10] In 1995, DOC, M&M, AMLRC, and DOT Waterways Division were merged into the Department of Natural Resources. [11] July 1997, DHS was formed from DASA, DORS, DMHDD, and specific programs from DPA and DPH. [12] In 1996, the Savings and Loan Advisory Board became the Board of Savings Institutions.

Illinois Administrative Procedure Act

ARTICLE 1. TITLE AND GENERAL PROVISIONS

Section 1-1 Short title

This Act may be cited as the Illinois Administrative Procedure Act.

Section 1-5 Applicability

- a) This Act applies to every agency as defined in this Act. Beginning January 1, 1978, in case of conflict between the provisions of this Act and the Act creating or conferring power on an agency, this Act shall control. If, however, an agency (or its predecessor in the case of an agency that has been consolidated or reorganized) has existing procedures on July 1, 1977, specifically for contested cases or licensing, those existing provisions control, except that this exception respecting contested cases and licensing does not apply if the Act creating or conferring power on the agency adopts by express reference the provisions of this Act. Where the Act creating or conferring power on an agency establishes administrative procedures not covered by this Act, those procedures shall remain in effect.
- b) The provisions of this Act do not apply to (i) preliminary hearings, investigations, or practices where no final determinations affecting State funding are made by the State Board of Education, (ii) legal opinions issued under Section 2-3.7 of the School Code, (iii) as to State colleges and universities, their disciplinary and grievance proceedings, academic irregularity and capricious grading proceedings, and admission standards and procedures, and (iv) the class specifications for positions and individual position descriptions prepared and maintained under the Personnel Code. Those class specifications shall, however, be made reasonably available to the public for inspection and copying. The provisions of this Act do not apply to hearings under Section 20 of the Uniform Disposition of Unclaimed Property Act.
- c) Section 5-35 of this Act relating to procedures for rulemaking does not apply to the following:
 - 1) Rules adopted by the Pollution Control Board that, in accordance with Section 7.2 of the Environmental Protection Act, are identical in substance to federal regulations or amendments to those regulations implementing the following: Sections 3001, 3002, 3003, 3004, 3005, and 9003 of the Solid Waste Disposal Act; Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980; Sections 307(b), 307(c), 307(d), 402(b)(8), and 402(b)(9) of the Federal Water Pollution Control Act; and Sections 1412(b), 1414(c), 1417(a), 1421, and 1445(a) of the Safe Drinking Water Act.

- 2) Rules adopted by the Pollution Control Board that establish or amend standards for the emission of hydrocarbons and carbon monoxide from gasoline powered motor vehicles subject to inspection under Section 13A-105 of the Vehicle Emissions Inspection Law and rules adopted under Section 13B-20 of the Vehicle Emissions Inspection Law of 1995.
- 3) Procedural rules adopted by the Pollution Control Board governing requests for exceptions under Section 14.2 of the Environmental Protection Act.
- 4) The Pollution Control Board's grant, pursuant to an adjudicatory determination, of an adjusted standard for persons who can justify an adjustment consistent with subsection (a) of Section 27 of the Environmental Protection Act.
- 5) Rules adopted by the Pollution Control Board that are identical in substance to the regulations adopted by the Office of the State Fire Marshal under clause (ii) of paragraph (b) of subsection (3) of Section 2 of the Gasoline Storage Act.
- d) Pay rates established under Section 8a of the Personnel Code shall be amended or repealed pursuant to the process set forth in Section 5-50 within 30 days after it becomes necessary to do so due to a conflict between the rates and the terms of a collective bargaining agreement covering the compensation of an employee subject to that Code.
- e) Section 10-45 of this Act shall not apply to any hearing, proceeding, or investigation conducted under Section 13-515 of the Public Utilities Act.
- f) Article 10 of this Act does not apply to any hearing, proceeding, or investigation conducted by the State Council for the State of Illinois created under Section 3-3-11.05 of the Unified Code of Corrections or by the Interstate Commission Commision for Adult Offender Supervision created under the Interstate Compact for Adult Offender Supervision.

Section 1-10 Definitions

As used in this Act, unless the context otherwise requires, terms have the meanings set forth in the following Sections.

Section 1-15 Administrative law judge

"Administrative law judge" means the presiding officer or officers at the initial hearing before each agency and each continuation of that hearing. The term also includes but is not limited to hearing examiners, hearing officers, referees, and arbitrators.

Section 1-20 Agency

"Agency" means each officer, board, commission, and agency created by the Constitution, whether in the executive, legislative, or judicial branch of State government, but other than the circuit court; each officer, department, board, commission, agency, institution, authority,

university, and body politic and corporate of the State; each administrative unit or corporate outgrowth of the State government that is created by or pursuant to statute, other than units of local government and their officers, school districts, and boards of election commissioners; and each administrative unit or corporate outgrowth of the above and as may be created by executive order of the Governor. "Agency", however, does not include the following:

- 1) The House of Representatives and Senate and their respective standing and service committees.
- 2) The Governor.
- 3) The justices and judges of the Supreme and Appellate Courts.

Section 1-25 Agency head

"Agency head" means an individual or group of individuals in whom the ultimate legal authority of an agency is vested by any provision of law.

Section 1-30 Contested case

"Contested case" means an adjudicatory proceeding (not including ratemaking, rulemaking, or quasi-legislative, informational, or similar proceedings) in which the individual legal rights, duties, or privileges of a party are required by law to be determined by an agency only after an opportunity for a hearing.

Section 1-35 License

"License" includes the whole or part of any agency permit, certificate, approval, registration, charter, or similar form of permission required by law, but it does not include a license required solely for revenue purposes.

Section 1-40 Licensing

"Licensing" includes the agency process respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal, or amendment of a license.

Section 1-45 Municipality

"Municipality" has the meaning ascribed to it in Section 1-1-2 of the Illinois Municipal Code.

Section 1-50 Order

"Order" means an agency action of particular applicability that determines the legal rights, duties, privileges, immunities, or other legal interests of one or more specific persons.

Section 1-55 Party

"Party" means each person or agency named or admitted as a party or properly seeking and entitled as of right to be admitted as a party.

Section 1-60 Person

"Person" means any individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character other than an agency.

Section 1-65 Ratemaking

"Ratemaking" or "ratemaking activities" means the establishment or review of or other exercise of control over the rates or charges for the products or services of any person, firm, or corporation operating or transacting any business in this State.

Section 1-70 Rule

"Rule" means each agency statement of general applicability that implements, applies, interprets, or prescribes law or policy, but does not include (i) statements concerning only the internal management of an agency and not affecting private rights or procedures available to persons or entities outside the agency, (ii) informal advisory rulings issued under Section 5-150, (iii) intra-agency memoranda, (iv) the prescription of standardized forms, or (v) documents prepared or filed or actions taken by the Legislative Reference Bureau under Section 5.04 of the Legislative Reference Bureau Act.

Section 1-75 Small business

"Small business" means a corporation or a concern, including its affiliates, that is independently owned and operated, not dominant in its field, and employs fewer than 50 full-time employees or has gross annual sales of less than \$4,000,000. For purposes of a specific rule, an agency may define small business to include employment of 50 or more persons if it finds that such a definition is necessary to adapt the rule to the needs and problems of small businesses and organizations.

Section 1-80 Small municipality

"Small municipality" means any municipality of 5,000 or fewer inhabitants and any municipality of more than 5,000 inhabitants that employs fewer than 50 persons full-time. For purposes of a specific rule, an agency may define small municipality to include employment of more than 50 persons if it finds that such a definition is necessary to adapt the rule to the needs and problems of small municipalities.

Section 1-85 Not for profit corporation

"Not for profit corporation" means a corporation organized under the General Not For Profit Corporation Act of 1986 that is not dominant in its field and employs fewer than 50 full-time

employees or has gross annual sales of less than \$4,000,000. For purposes of a specific rule, an agency may define a not for profit corporation to include employment of 50 or more persons if it finds that such a definition is necessary to adapt the rule to the needs and problems of not for profit corporations.

Section 1-90 Rulemaking

- a) "Rulemaking" means the process and required documentation for the adoption of Illinois Administrative Code text.
- b) Required documentation.
 - 1) At the time of original proposal, rulemaking documentation must consist of a notice page and new, amendatory, or repealed text. New, repealed, and amendatory text must be depicted in the manner required by Secretary of State rule. Amendatory rulemakings must indicate text deletion by striking through all text that is to be omitted and must indicate text addition by underlining all new text.
 - 2) At the time of adoption, documentation must also include pages indicating the text of the new rule, without striking and underlining, for inclusion in the official Secretary of State records, the certification required under Section 5-65(a), and any additional documentation required by Secretary of State rule.
 - 3) For a required rulemaking adopted under Section 5-15, an emergency rulemaking under Section 5-45, or a peremptory rulemaking under Section 5-50, the documentation requirements of paragraphs (b)(1) and (2) of this Section apply at the time of adoption.
- c) "Background text" means existing text of the Illinois Administrative Code that is part of a rulemaking but is not being amended by the rulemaking. Background text in rulemaking documentation shall match the current text of the Illinois Administrative Code.
- d) No material that was originally proposed in one rulemaking may be combined with another proposed rulemaking that was initially published without that material. However, this does not preclude separate rulemakings from being combined for publication at the time of adoption as authorized by Secretary of State rule.

ARTICLE 5. RULEMAKING PROVISIONS

Section 5-5 Applicability

All rules of agencies shall be adopted in accordance with this Article.

Section 5-10 Adoption and availability of rules

- a) In addition to other rulemaking requirements imposed by law, each agency shall
 - (i) adopt rules of practice setting forth the nature and requirements of all formal

- hearings and (ii) make available for public inspection all rules adopted by the agency in the discharge of its functions.
- b) Each agency shall make available for public inspection all final orders, decisions, and opinions, except those deemed confidential by State or federal statute and any trade secrets.
 - c) No agency rule is valid or effective against any person or party, nor may it be invoked by the agency for any purpose, until it has been made available for public inspection and filed with the Secretary of State as required by this Act. No agency, however, shall assert the invalidity of a rule that it has adopted under this Act when an opposing party has relied upon the rule.
 - d) Rulemaking that creates or expands a State mandate on units of local government, school districts, or community college districts is subject to the State Mandates Act. The required Statement of Statewide Policy Objectives shall be published in the Illinois Register at the same time that the first notice under Section 5-40 is published or when the rule is published under Section 5-45 or 5-50.

Section 5-15 Required rules

- a) Each agency shall maintain as rules the following:
 - 1) A current description of the agency's organization with necessary charts depicting that organization.
 - 2) The current procedures by which the public can obtain information or make submissions or requests on subjects, programs, and activities of the agency. Requests for copies of agency rules shall not be deemed Freedom of Information Act requests unless so labeled by the requestor.
 - 3) Tables of contents, indices, reference tables, and other materials to aid users in finding and using the agency's collection of rules currently in force.
 - 4) A current description of the agency's rulemaking procedures with necessary flow charts depicting those procedures.
 - 5) Any rules adopted under this Section in accordance with Sections 5-75 and 10-20 of this Act.
- b) The rules required to be filed by this Section may be adopted, amended, or repealed and filed as provided in this Section instead of any other provisions or requirements of this Act. The rules required by this Section may be adopted, amended, or repealed by filing a certified copy with the Secretary of State under subsections (a) and (b) of Section 5-65 and may become effective immediately.

Section 5-20 Implementing discretionary powers

Each rule that implements a discretionary power to be exercised by an agency shall include the standards by which the agency shall exercise the power. The standards shall be stated as precisely and clearly as practicable under the conditions to inform fully those persons affected.

Section 5-25 Ratemaking

Every agency that is empowered by law to engage in ratemaking activities shall establish by rule, not inconsistent with the provisions of law establishing its ratemaking jurisdiction, the practice and procedures to be followed in ratemaking activities before the agency.

Section 5-30 Regulatory flexibility

When an agency proposes a new rule or an amendment to an existing rule that may have an impact on small businesses, not for profit corporations, or small municipalities, the agency shall do each of the following:

- a) The agency shall consider each of the following methods for reducing the impact of the rulemaking on small businesses, not for profit corporations, or small municipalities. The agency shall reduce the impact by utilizing one or more of the following methods if it finds that the methods are legal and feasible in meeting the statutory objectives that are the basis of the proposed rulemaking.
 - 1) Establish less stringent compliance or reporting requirements in the rule for small businesses, not for profit corporations, or small municipalities.
 - 2) Establish less stringent schedules or deadlines in the rule for compliance or reporting requirements for small businesses, not for profit corporations, or small municipalities.
 - 3) Consolidate or simplify the rule's compliance or reporting requirements for small businesses, not for profit corporations, or small municipalities.
 - 4) Establish performance standards to replace design or operational standards in the rule for small businesses, not for profit corporations, or small municipalities.
 - 5) Exempt small businesses, not for profit corporations, or small municipalities from any or all requirements of the rule.
- b) Before or during the notice period required under subsection (b) of Section 5-40, the agency shall provide an opportunity for small businesses, not for profit corporations, or small municipalities to participate in the rulemaking process. The agency shall utilize one or more of the following techniques. These techniques are in addition to other rulemaking requirements imposed by this Act or by any other Act.
 - 1) The inclusion in any advance notice of possible rulemaking of a statement that the rule may have an impact on small businesses, not for profit corporations, or small municipalities.
 - 2) The publication of a notice of rulemaking in publications likely to be obtained by small businesses, not for profit corporations, or small municipalities.
 - 3) The direct notification of interested small businesses, not for profit corporations, or small municipalities.
 - 4) The conduct of public hearings concerning the impact of the rule on small businesses, not for profit corporations, or small municipalities.

- 5) The use of special hearing or comment procedures to reduce the cost or complexity of participation in the rulemaking by small businesses, not for profit corporations, or small municipalities.
- c) Before the notice period required under subsection (b) of Section 5-40, the Secretary of State shall provide to the Business Assistance Office of the Department of Commerce and Community Affairs a copy of any proposed rules or amendments accepted for publication. The Business Assistance Office shall prepare an impact analysis of the rule describing the rule's effect on small businesses whenever the Office believes, in its discretion, that an analysis is warranted or whenever requested to do so by 25 interested persons, an association representing at least 100 interested persons, the Governor, a unit of local government, or the Joint Committee on Administrative Rules. The impact analysis shall be completed within the notice period as described in subsection (b) of Section 5-40. Upon completion of the analysis the Business Assistance Office shall submit this analysis to the Joint Committee on Administrative Rules, any interested person who requested the analysis, and the agency proposing the rule. The impact analysis shall contain the following:
 - 1) A summary of the projected reporting, recordkeeping, and other compliance requirements of the proposed rule.
 - 2) A description of the types and an estimate of the number of small businesses to which the proposed rule will apply.
 - 3) An estimate of the economic impact that the regulation will have on the various types of small businesses affected by the rulemaking.
 - 4) A description or listing of alternatives to the proposed rule that would minimize the economic impact of the rule. The alternatives must be consistent with the stated objectives of the applicable statutes and regulations.

Section 5-35 Procedure for rulemaking

- a) Before the adoption, amendment, or repeal of any rule, each agency shall accomplish the actions required by Section 5-40, 5-45, or 5-50, whichever is applicable.
- b) No action by any agency to adopt, amend, or repeal a rule after this Act has become applicable to the agency shall be valid unless taken in compliance with this Section. A proceeding to contest any rule on the ground of non-compliance with the procedural requirements of this Section must be commenced within 2 years from the effective date of the rule.
- c) The rulemaking procedures of this Article 5 do not apply to a matter relating solely to agency management or personnel practices or to public property, loans, or contracts.

Section 5-40 General rulemaking

- a) In all rulemaking to which Sections 5-45 and 5-50 do not apply, each agency shall comply with this Section.
- b) Each agency shall give at least 45 days' notice of its intended action to the general public. This first notice period shall commence on the first day the notice appears in the Illinois Register. The first notice shall include all the following:
 - 1) The text of the proposed rule, the old and new materials of a proposed amendment, or the text of the provision to be repealed.
 - 2) The specific statutory citation upon which the proposed rule, the proposed amendment to a rule, or the proposed repeal of a rule is based and by which it is authorized.
 - 3) A complete description of the subjects and issues involved.
 - 3.5) A descriptive title or other description of any published study or research report used in developing the rule, the identity of the person who performed such study, and a description of where the public may obtain a copy of any such study or research report. If the study was performed by an agency or by a person or entity that contracted with the agency for the performance of the study, the agency shall also make copies of the underlying data available to members of the public upon request if the data are not protected from disclosure under the Freedom of Information Act.
 - 4) For all proposed rules and proposed amendments to rules, an initial regulatory flexibility analysis containing a description of the types of small businesses subject to the rule; a brief description of the proposed reporting, bookkeeping, and other procedures required for compliance with the rule; and a description of the types of professional skills necessary for compliance.
 - 5) The time, place, and manner in which interested persons may present their views and comments concerning the proposed rulemaking.

During the first notice period, the agency shall accept from any interested persons data, views, arguments, or comments. These may, in the discretion of the agency, be submitted either orally or in writing or both. The notice published in the Illinois Register shall indicate the manner selected by the agency for the submissions. The agency shall consider all submissions received.

The agency shall hold a public hearing on the proposed rulemaking during the first notice period if (i) during the first notice period, the agency finds that a public hearing would facilitate the submission of views and comments that might not otherwise be submitted or (ii) the agency receives a request for a public hearing, within the first 14 days after publication of the notice of proposed rulemaking in the Illinois Register, from 25 interested persons, an association representing at least 100 interested persons, the Governor, the Joint Committee on Administrative Rules, or a unit of local government that may be affected. At the public hearing, the agency shall allow interested persons to present views and

comments on the proposed rulemaking. A public hearing in response to a request for a hearing may not be held less than 20 days after the publication of the notice of proposed rulemaking in the Illinois Register unless notice of the public hearing is included in the notice of proposed rulemaking. A public hearing on proposed rulemaking may not be held less than 5 days before submission of the notice required under subsection (c) of this Section to the Joint Committee on Administrative Rules. Each agency may prescribe reasonable rules for the conduct of public hearings on proposed rulemaking to prevent undue repetition at the hearings. The hearings must be open to the public and recorded by stenographic or mechanical means. At least one agency representative shall be present during the hearing who is qualified to respond to general questions from the public regarding the agency's proposal and the rulemaking process.

- c) Each agency shall provide additional notice of the proposed rulemaking to the Joint Committee on Administrative Rules. The period commencing on the day written notice is received by the Joint Committee shall be known as the second notice period and shall expire 45 days thereafter unless before that time the agency and the Joint Committee have agreed to extend the second notice period beyond 45 days for a period not to exceed an additional 45 days or unless the agency has received a statement of objection from the Joint Committee or notification from the Joint Committee that no objection will be issued. The written notice to the Joint Committee shall include (i) the text and location of any changes made to the proposed rulemaking during the first notice period in a form prescribed by the Joint Committee; (ii) for all proposed rules and proposed amendments to rules, a final regulatory flexibility analysis containing a summary of issues raised by small businesses during the first notice period and a description of actions taken on any alternatives to the proposed rule suggested by small businesses during the first notice period, including reasons for rejecting any alternatives not utilized; and (iii) if a written request has been made by the Joint Committee within 30 days after initial notice appears in the Illinois Register under subsection (b) of this Section, an analysis of the economic and budgetary effects of the proposed rulemaking. After commencement of the second notice period, no substantive change may be made to a proposed rulemaking unless it is made in response to an objection or suggestion of the Joint Committee. The agency shall also send a copy of the final regulatory flexibility analysis to each small business that has presented views or comments on the proposed rulemaking during the first notice period and to any other interested person who requests a copy. The agency may charge a reasonable fee for providing the copies to cover postage and handling costs.
- d) After the expiration of the second notice period, after notification from the Joint Committee that no objection will be issued, or after a response by the agency to a statement of objections issued by the Joint Committee, whichever is applicable, the agency shall file, under Section 5-65, a certified copy of each rule, modification, or repeal of any rule adopted by it. The copy shall be published in the Illinois Register. Each rule hereafter adopted under this Section is effective

upon filing unless a later effective date is required by statute or is specified in the rulemaking.

- e) No rule or modification or repeal of any rule may be adopted, or filed with the Secretary of State, more than one year after the date the first notice period for the rulemaking under subsection (b) commenced. Any period during which the rulemaking is prohibited from being filed under Section 5-115 shall not be considered in calculating this one-year time period.

Section 5-45 Emergency rulemaking

- a) "Emergency" means the existence of any situation that any agency finds reasonably constitutes a threat to the public interest, safety, or welfare.
- b) If any agency finds that an emergency exists that requires adoption of a rule upon fewer days than is required by Section 5-40 and states in writing its reasons for that finding, the agency may adopt an emergency rule without prior notice or hearing upon filing a notice of emergency rulemaking with the Secretary of State under Section 5-70. The notice shall include the text of the emergency rule and shall be published in the Illinois Register. Consent orders or other court orders adopting settlements negotiated by an agency may be adopted under this Section. Subject to applicable constitutional or statutory provisions, an emergency rule becomes effective immediately upon filing under Section 5-65 or at a stated date less than 10 days thereafter. The agency's finding and a statement of the specific reasons for the finding shall be filed with the rule. The agency shall take reasonable and appropriate measures to make emergency rules known to the persons who may be affected by them.
- c) An emergency rule may be effective for a period of not longer than 150 days, but the agency's authority to adopt an identical rule under Section 5-40 is not precluded. No emergency rule may be adopted more than once in any 24 month period, except that this limitation on the number of emergency rules that may be adopted in a 24 month period does not apply to (i) emergency rules that make additions to and deletions from the Drug Manual under Section 5-5.16 of the Illinois Public Aid Code or the generic drug formulary under Section 3.14 of the Illinois Food, Drug and Cosmetic Act or (ii) emergency rules adopted by the Pollution Control Board before July 1, 1997 to implement portions of the Livestock Management Facilities Act. Two or more emergency rules having substantially the same purpose and effect shall be deemed to be a single rule for purposes of this Section.
- d) In order to provide for the expeditious and timely implementation of the State's fiscal year 1999 budget, emergency rules to implement any provision of Public Act 90-587 or 90-588 or any other budget initiative for fiscal year 1999 may be adopted in accordance with this Section by the agency charged with administering that provision or initiative, except that the 24-month limitation on the adoption of emergency rules and the provisions of Sections 5-115 and 5-125 do not apply to rules adopted under this subsection (d). The adoption of emergency rules

authorized by this subsection (d) shall be deemed to be necessary for the public interest, safety, and welfare.

- e) In order to provide for the expeditious and timely implementation of the State's fiscal year 2000 budget, emergency rules to implement any provision of this amendatory Act of the 91st General Assembly or any other budget initiative for fiscal year 2000 may be adopted in accordance with this Section by the agency charged with administering that provision or initiative, except that the 24-month limitation on the adoption of emergency rules and the provisions of Sections 5-115 and 5-125 do not apply to rules adopted under this subsection (e). The adoption of emergency rules authorized by this subsection (e) shall be deemed to be necessary for the public interest, safety, and welfare.
- f) In order to provide for the expeditious and timely implementation of the State's fiscal year 2001 budget, emergency rules to implement any provision of this amendatory Act of the 91st General Assembly or any other budget initiative for fiscal year 2001 may be adopted in accordance with this Section by the agency charged with administering that provision or initiative, except that the 24-month limitation on the adoption of emergency rules and the provisions of Sections 5-115 and 5-125 do not apply to rules adopted under this subsection (f). The adoption of emergency rules authorized by this subsection (f) shall be deemed to be necessary for the public interest, safety, and welfare.
- g) In order to provide for the expeditious and timely implementation of the State's fiscal year 2002 budget, emergency rules to implement any provision of this amendatory Act of the 92nd General Assembly or any other budget initiative for fiscal year 2002 may be adopted in accordance with this Section by the agency charged with administering that provision or initiative, except that the 24-month limitation on the adoption of emergency rules and the provisions of Sections 5-115 and 5-125 do not apply to rules adopted under this subsection (g). The adoption of emergency rules authorized by this subsection (g) shall be deemed to be necessary for the public interest, safety, and welfare.
- h) In order to provide for the expeditious and timely implementation of the State's fiscal year 2003 budget, emergency rules to implement any provision of this amendatory Act of the 92nd General Assembly or any other budget initiative for fiscal year 2003 may be adopted in accordance with this Section by the agency charged with administering that provision or initiative, except that the 24-month limitation on the adoption of emergency rules and the provisions of Sections 5-115 and 5-125 do not apply to rules adopted under this subsection (h). The adoption of emergency rules authorized by this subsection (h) shall be deemed to be necessary for the public interest, safety, and welfare.

Section 5-46 (Repealed)

Section 5-46.1 Emergency rulemaking

- a) The General Assembly finds that the State's current financial situation constitutes an emergency for the purposes of this Act.

- b) Beginning July 1, 1995, agencies may implement the changes made by this amendatory Act of 1995 or other budget reduction initiatives for Fiscal Year 1996 through the use of emergency rules in accordance with the provisions of Section 5-45 of this Act, except that the 24-month limitation on the adoption of similar emergency rules under Section 5-45 and the provisions of Sections 5-115 and 5-125 do not apply to rules adopted to implement changes made by this amendatory Act of 1995 or other budget reduction initiatives for Fiscal Year 1996.
- c) Agencies may implement the changes made by this amendatory Act of 1996 or other budget reduction initiatives for Fiscal Year 1997 through the use of emergency rules in accordance with the provisions of Section 5-45 of this Act, except that the 24-month limitation on the adoption of similar emergency rules under Section 5-45 and the provisions of Sections 5-115 and 5-125 do not apply to rules adopted to implement changes made by this amendatory Act of 1996 or other budget reduction initiatives for Fiscal Year 1997.

Section 5-47 (Repealed)

Section 5-50 Peremptory rulemaking

"Peremptory rulemaking" means any rulemaking that is required as a result of federal law, federal rules and regulations, an order of a court, or a collective bargaining agreement pursuant to subsection (d) of Section 1-5, under conditions that preclude compliance with the general rulemaking requirements imposed by Section 5-40 and that preclude the exercise of discretion by the agency as to the content of the rule it is required to adopt. Peremptory rulemaking shall not be used to implement consent orders or other court orders adopting settlements negotiated by the agency. If any agency finds that peremptory rulemaking is necessary and states in writing its reasons for that finding, the agency may adopt peremptory rulemaking upon filing a notice of rulemaking with the Secretary of State under Section 5-70. The notice shall be published in the Illinois Register. A rule adopted under the peremptory rulemaking provisions of this Section becomes effective immediately upon filing with the Secretary of State and in the agency's principal office, or at a date required or authorized by the relevant federal law, federal rules and regulations, or court order, as stated in the notice of rulemaking. Notice of rulemaking under this Section shall be published in the Illinois Register, shall specifically refer to the appropriate State or federal court order or federal law, rules, and regulations, and shall be in a form as the Secretary of State may reasonably prescribe by rule. The agency shall file the notice of peremptory rulemaking within 30 days after a change in rules is required.

Section 5-55 Automatic repeal of rules

A rule may provide for its automatic repeal on a date specified in the rule. The repeal shall be effective on the date specified, provided that notice of the repeal is published in the Illinois Register not less than 30 nor more than 60 days before the effective date of the repeal. This Section does not apply to any rules filed under Section 5-45.

Section 5-60 Regulatory agenda

An agency shall submit for publication in the Illinois Register by January 1 and July 1 of each year a regulatory agenda to elicit public comments concerning any rule that the agency is considering proposing but for which no notice of proposed rulemaking activity has been submitted to the Illinois Register. A regulatory agenda shall consist of summaries of those rules. Each summary shall, in less than 2,000 words, contain the following when practicable:

- 1) A description of the rule.
- 2) The statutory authority the agency is exercising.
- 3) A schedule of the dates for any hearings, meetings, or other opportunities for public participation in the development of the rule.
- 4) The date the agency anticipates submitting a notice of proposed rulemaking activity, if known.
- 5) The name, address, and telephone number of the agency representative who is knowledgeable about the rule, from whom any information may be obtained, and to whom written comments may be submitted concerning the rule.
- 6) A statement whether the rule will affect small businesses, not for profit corporations, or small municipalities as defined in this Act.
- 7) Any other information that may serve the public interest. Nothing in this Section shall preclude an agency from adopting a rule that has not been summarized in a regulatory agenda or from adopting a rule different than one summarized in a regulatory agenda if in the agency head's best judgment it is necessary. If an agency finds that a situation exists that requires adoption of a rule that was not summarized on either of the 2 most recent regulatory agendas, it shall state its reasons in writing together with the facts that form their basis upon filing the notice of proposed rulemaking with the Secretary of State under Section 5-40. Nothing in this Section shall require an agency to adopt a rule summarized in a regulatory agenda. The Secretary of State shall adopt rules necessary for the publication of a regulatory agenda, including but not limited to standard submission forms and deadlines.

Section 5-65 Filing of rules

- a) Each agency shall file in the office of the Secretary of State and in the agency's principal office a certified copy of each rule and modification or repeal of any rule adopted by it. The Secretary of State and the agency shall each keep a permanent register of the rules open to public inspection. Whenever a rule or modification or repeal of any rule is filed with the Secretary of State, the Secretary shall send a certified copy of the rule, modification or repeal, within 3 working days after it is filed, to the Joint Committee on Administrative Rules.
- b) Concurrent with the filing of any rule under this Section, the filing agency shall submit to the Secretary of State for publication in the next available issue of the Illinois Register a notice of adopted rules. The notice shall include the following:
 - 1) The text of the adopted rule, including the full text of the new rule (if the material is a new rule), the full text of the rule or rules as amended (if the

material is an amendment to a rule or rules), or the notice of repeal (if the material is a repealer).

- 2) The name, address, and telephone number of an individual who will be available to answer questions and provide information to the public concerning the adopted rules.
- 3) Other information that the Secretary of State may by rule require in the interest of informing the public.

Section 5-70 Form and publication of notices

- a) The Secretary of State may prescribe reasonable rules concerning the form of documents to be filed with the Secretary of State and may refuse to accept for filing certified copies that do not comply with the rules. In addition, the Secretary of State shall publish and maintain the Illinois Register and may prescribe reasonable rules setting forth the manner in which agencies shall submit notices required by this Act for publication in the Illinois Register. The Illinois Register shall be published at least once each week on the same day (unless that day is an official State holiday, in which case the Illinois Register shall be published on the next following business day) and sent to subscribers who subscribe for the publication with the Secretary of State. The Secretary of State may charge a subscription price to subscribers that covers mailing and publication costs.
- b) The Secretary of State shall accept for publication in the Illinois Register all Pollution Control Board documents, including but not limited to Board opinions, the results of Board determinations concerning adjusted standards proceedings, notices of petitions for individual adjusted standards, results of Board determinations concerning the necessity for economic impact studies, restricted status lists, hearing notices, and any other documents related to the activities of the Pollution Control Board that the Board deems appropriate for publication.

Section 5-75 Incorporation by reference

- a) An agency may incorporate by reference, in its rules adopted under Section 5-35, rules, regulations, standards, and guidelines of an agency of the United States or a nationally or state recognized organization or association without publishing the incorporated material in full. The reference in the agency rules must fully identify the incorporated matter by publisher address and date in order to specify how a copy of the material may be obtained and must state that the rule, regulation, standard, or guideline does not include any later amendments or editions. An agency may incorporate by reference these matters in its rules only if the agency, organization, or association originally issuing the matter makes copies readily available to the public. This Section does not apply to any agency internal manual. For any law imposing taxes on or measured by income, the Department of Revenue may promulgate rules that include incorporations by reference of federal rules or regulations without identifying the incorporated matter by date

and without including a statement that the incorporation does not include later amendments.

- b) Use of the incorporation by reference procedure under this Section shall be reviewed by the Joint Committee on Administrative Rules during the rulemaking process as set forth in this Act.
- c) The agency adopting a rule, regulation, standard, or guideline under this Section shall maintain a copy of the referenced rule, regulation, standard, or guideline in at least one of its principal offices and shall make it available to the public upon request for inspection and copying at no more than cost. Requests for copies of materials incorporated by reference shall not be deemed Freedom of Information Act requests unless so labeled by the requestor. The agency shall designate by rule the agency location at which incorporated materials are maintained and made available to the public for inspection and copying. These rules may be adopted under the procedures in Section 5-15. In addition, the agency may include the designation of the agency location of incorporated materials in a rulemaking under Section 5-35, but emergency and preemptory rulemaking procedures may not be used solely for this purpose.

Section 5-80 Publication of rules

- a) The Secretary of State shall, by rule, prescribe a uniform system for the codification of rules. The Secretary of State shall also, by rule, establish a schedule for compliance with the uniform codification system. The Secretary of State shall not adopt any codification system or schedule under this subsection without the approval of the Joint Committee on Administrative Rules. Approval by the Joint Committee shall be conditioned solely upon establishing that the proposed codification system and schedule are compatible with existing electronic data processing equipment and programs maintained by and for the General Assembly. Nothing in this Section shall prohibit an agency from adopting rules in compliance with the codification system earlier than specified in the schedule.
- b) Each rule proposed in compliance with the codification system shall be reviewed by the Secretary of State before the expiration of the public notice period under subsection (b) of Section 5-40. The Secretary of State shall cooperate with agencies in the Secretary of State's review to insure that the purposes of the codification system are accomplished. The Secretary of State shall have the authority to make changes in the numbering and location of the rule in the codification scheme if those changes do not affect the meaning of the rules. The Secretary of State may recommend changes in the sectioning and headings proposed by the agency and suggest grammatical and technical changes to correct errors. The Secretary of State may add notes concerning the statutory authority, dates proposed and adopted, and other similar notes to the text of the rules, if the notes are not supplied by the agency. This review by the Secretary of State shall be for the purpose of insuring the uniformity of and compliance with the codification system. The Secretary of State shall prepare indexes by agency,

- subject matter, and statutory authority and any other necessary indexes, tables, and other aids for locating rules to assist the public in the use of the Code.
- c) The Secretary of State shall make available to the agency and the Joint Committee on Administrative Rules copies of the changes in the numbering and location of the rule in the codification scheme, the recommended changes in the sectioning and headings, and the suggestions made concerning the correction of grammatical and technical errors or other suggested changes. The agency, in the notice required by subsection (c) of Section 5-40, shall provide to the Joint Committee a response to the recommendations of the Secretary of State including any reasons for not adopting the recommendations.
 - d) If a reorganization of agencies, transfer of functions between agencies, or abolishment of agencies by executive order or law affects rules on file with the Secretary of State, the Secretary of State shall notify the Governor, the Attorney General, and the agencies involved of the effects upon the rules on file. If the Governor or the agencies involved do not respond to the Secretary of State's notice within 45 days by instructing the Secretary of State to delete or transfer the rules, the Secretary of State may delete or place the rules under the appropriate agency for the purpose of insuring the consistency of the codification scheme and shall notify the Governor, the Attorney General, and the agencies involved.
 - e) (Blank).
 - f) The Secretary of State shall ensure that the Illinois Administrative Code is published and made available to the public in a form that is updated at least annually. The Code shall contain the complete text of all rules of all State agencies filed with the Secretary's office and effective on October 1, 1984, or later and the indexes, tables, and other aids for locating rules prepared by the Secretary of State. The Secretary of State shall design the Illinois Register to supplement the Code. The Secretary of State shall ensure that copies of the Illinois Register are available to the public and governmental entities and agencies. If the Secretary of State determines that the Secretary's office will publish and distribute either the Register or the Code, the Secretary shall make copies available to the public at a reasonable fee, established by the Secretary by rule, and shall make copies available to governmental entities and agencies at a price covering publication and mailing costs only. The Secretary of State shall make the electronically stored database of the Illinois Register and the Code available in accordance with this Section and Section 5.08 of the Legislative Information System Act.
 - g) The publication of a rule in the Code or in the Illinois Register as an adopted rule shall establish a rebuttable presumption that the rule was duly filed and that the text of the rule as published in the Code is the text of the rule as adopted. Publication of the text of a rule in any other location whether by the agency or some other person shall not be taken as establishing such a presumption. Judicial or official notice shall be taken of the text of each rule published in the Code or Register.
 - h) The codification system, the indexes, tables, and other aids for locating rules prepared by the Secretary of State, notes, and other materials developed under this Section in connection with the publication of the Illinois Administrative Code and

the Illinois Register shall be the official compilations of the administrative rules of Illinois and shall be entirely in the public domain for purposes of federal copyright law.

- i) The Legislative Information System shall maintain on its electronic data processing equipment the complete text of the Illinois Register and Illinois Administrative Code created in compliance with this Act. This electronic information shall be made available for use in the publication of the Illinois Register and Illinois Administrative Code by the Secretary of State if the Secretary determines that his office will publish these materials as authorized by subsection (f).
- j) The Legislative Information System, upon consultation with the Joint Committee on Administrative Rules and the Secretary of State, shall make the electronically stored database of the Illinois Register and the Illinois Administrative Code available in an electronically stored medium to those who request it. The Legislative Information System shall establish and charge a reasonable fee for providing the electronic information. Amounts received under this Section shall be deposited into the General Assembly Computer Equipment Revolving Fund.

Section 5-85 Correction of rules filed with the Secretary of State

- a) Corrections to a proposed rulemaking that has been published in the Illinois Register but is not yet adopted shall be made pursuant to the rules of the Secretary of State. Corrections to an adopted rulemaking that has been published in the Illinois Register shall be made by initiating a new rulemaking or pursuant to subsection (b).
- b) Expedited corrections to any form of adopted rule that has been published in the Illinois Register shall be made pursuant to the procedures set forth in this subsection (b) and the rules of the Joint Committee on Administrative Rules adopted pursuant to this subsection (b).

An agency may request that the Joint Committee on Administrative Rules issue a certification of correction under this subsection (b) to correct: (1) non-substantive errors such as typographical, clerical, grammatical, printing, copying or other inadvertent errors such as omission of existing or inclusion of previously repealed Illinois Administrative Code text; (2) any omissions or errors that create unintentional discrepancies between adopted rule text and text previously published in the Illinois Register or second notice rule text; or (3) any discrepancies between adopted rule text and agreements certified by the Joint Committee on Administrative Rules during the second notice period.

In requesting the Joint Committee on Administrative Rules to issue a certification of correction, the agency shall specify which of the above reasons for correction is applicable and shall submit the full affected Section of the Code, indicating both the incorrect text and the agency's proposal for correcting the error. The Joint Committee on Administrative Rules shall verify that the requested correction

meets the criteria of this subsection (b), that the public interest will be served and no hardship created by remediation of the error or omission more quickly than could be accomplished by the regular rulemaking process, and that the public notice considerations of this Act are not being unduly circumvented.

Upon receiving a certification of correction from the Joint Committee on Administrative Rules, an agency shall file a notice of correction with the Secretary of State for publication in the next available issue of the Illinois Register. Pursuant to agreement between the Joint Committee on Administrative Rules and the agency, the effective date of the correction shall be identical to that of the adopted rule being corrected or a specified later date.

The agency shall take reasonable and appropriate measures to make rule corrections known to persons who may be affected by them.

Section 5-90 Joint Committee on Administrative Rules

- a) The Joint Committee on Administrative Rules is established as a legislative support services agency subject to the Legislative Commission Reorganization Act of 1984. When feasible, the agenda of each meeting of the Joint Committee shall be submitted to the Secretary of State to be published at least 5 days before the meeting in the Illinois Register. The Joint Committee may also weekly, or as often as necessary, submit for publication in the Illinois Register lists of the dates on which notices under Section 5-40 were received and the dates on which the proposed rulemakings will be considered. The provisions of this subsection shall not prohibit the Joint Committee from acting upon an item that was not contained in the published agenda.
- b) The Joint Committee may charge reasonable fees for copies of documents or publications to cover the cost of copying or printing. The Joint Committee shall, however, provide copies of documents or publications without cost to agencies that are directly affected by recommendations or findings included in the documents or publications.

Section 5-95 Oaths and affirmations

- a) The Executive Director of the Joint Committee or any designated person may administer oaths or affirmations and take affidavits or depositions of any person.
- b) The Executive Director, upon approval of a majority vote of the Joint Committee, or the presiding officers may subpoena and compel the attendance before the Joint Committee and examine under oath any person. They also may subpoena and compel the production for the Joint Committee of any records, books, papers, contracts, or other documents.
- c) If any person fails to obey a subpoena issued under this Section, the Joint Committee may apply to any circuit court to secure compliance with the subpoena. The failure to comply with the order of the court issued in response thereto shall be punished as a contempt.

Section 5-100 Powers of the Joint Committee

The Joint Committee shall have the following powers under this Act:

- a) The function of the Joint Committee shall be the promotion of adequate and proper rules by agencies and an understanding on the part of the public respecting those rules. This function shall be advisory only, except as provided in Sections 5-115 and 5-125.
- b) The Joint Committee may undertake studies and investigations concerning rulemaking and agency rules.
- c) The Joint Committee shall monitor and investigate agencies' compliance with the provisions of this Act, make periodic investigations of the rulemaking activities of all agencies, and evaluate and report on all rules in terms of their propriety, legal adequacy, relation to statutory authorization, economic and budgetary effects, and public policy.
- d) Hearings and investigations conducted by the Joint Committee under this Act may be held at times and places within the State as the Committee deems necessary.
- e) The Joint Committee may request from any agency an analysis of the following:
 - 1) The effect of a new rule, amendment, or repealer, including any direct economic effect on the persons regulated by the rule; any anticipated effect on the proposing agency's budget and the budgets of other State agencies; and any anticipated effects on State revenues.
 - 2) The agency's evaluation of the submissions presented to the agency under Section 5-40.
 - 3) A description of any modifications from the initially published proposal made in the finally accepted version of the intended rule, amendment, or repealer.
 - 4) The agency's justification and rationale for the intended rule, amendment, or repealer.
- f) Failure of the Joint Committee to object to any proposed rule, amendment, or repealer or any existing rule shall not be construed as implying direct or indirect approval of the rule or proposed rule, amendment, or repealer by the Joint Committee or the General Assembly.

Section 5-105 Responsibilities of the Joint Committee

The Joint Committee shall have the following responsibilities under this Act:

- a) The Joint Committee shall conduct a systematic and continuing study of the rules and rulemaking process of all State agencies, including those agencies not covered in Section 1-25, for the purpose of improving the rulemaking process, reducing the number and bulk of rules, removing redundancies and unnecessary repetitions, and correcting grammatical, typographical, and similar errors not affecting the construction or meaning of the rules. The Joint Committee shall make recommendations to the appropriate affected agency.

- b) The Joint Committee shall review the statutory authority on which any administrative rule is based.
- c) The Joint Committee shall maintain a review program to study the impact of legislative changes, court rulings, and administrative action on agency rules and rulemaking.
- d) The Joint Committee shall suggest rulemaking by an agency whenever the Joint Committee, in the course of its review of the agency's rules under this Act, determines that the agency's rules are incomplete, inconsistent, or otherwise deficient.

Section 5-110 Responsibilities of the Joint Committee with respect to proposed rules, amendments, or repealers

- a) The Joint Committee shall examine any proposed rule, amendment to a rule, and repeal of a rule to determine whether the proposed rule, amendment to a rule, or repeal of a rule is within the statutory authority upon which it is based; whether the rule, amendment to a rule, or repeal of a rule is in proper form; and whether the notice was given before its adoption, amendment, or repeal and was sufficient to give adequate notice of the purpose and effect of the rule, amendment, or repeal. In addition, the Joint Committee may consider whether the agency has considered alternatives to the rule that are consistent with the stated objectives of both the applicable statutes and regulations and whether the rule is designed to minimize economic impact on small businesses.
- b) If the Joint Committee objects to a proposed rule, amendment to a rule, or repeal of a rule, it shall certify the fact to the issuing agency and include with the certification a statement of its specific objections.
- c) If within the second notice period the Joint Committee certifies its objections to the issuing agency, then that agency shall do one of the following within 90 days after receiving the statement of objection:
 - 1) Modify the proposed rule, amendment, or repealer to meet the Joint Committee's objections.
 - 2) Withdraw the proposed rule, amendment, or repealer in its entirety.
 - 3) Refuse to modify or withdraw the proposed rule, amendment, or repealer.
- d) If an agency elects to modify a proposed rule, amendment, or repealer to meet the Joint Committee's objections, it shall make those modifications that are necessary to meet the objections and shall resubmit the rule, amendment, or repealer to the Joint Committee. In addition, the agency shall submit a notice of its election to modify the proposed rule, amendment, or repealer to meet the Joint Committee's objections to the Secretary of State, and the notice shall be published in the first available issue of the Illinois Register, but the agency shall not be required to conduct a public hearing. If the Joint Committee determines that the modifications do not remedy the Joint Committee's objections, it shall so notify the agency in writing and shall submit a copy of that notification to the Secretary of State for publication in the next available issue of the Illinois Register. In

addition, the Joint Committee may recommend legislative action as provided in subsection (g) for agency refusals.

- e) If an agency elects to withdraw a proposed rule, amendment, or repealer as a result of the Joint Committee's objections, it shall notify the Joint Committee in writing of its election and shall submit a notice of the withdrawal to the Secretary of State. The notice shall be published in the next available issue of the Illinois Register.
- f) Failure of an agency to respond to the Joint Committee's objections to a proposed rule, amendment, or repealer within the time prescribed in subsection (c) shall constitute withdrawal of the proposed rule, amendment, or repealer in its entirety. The Joint Committee shall submit a notice to that effect to the Secretary of State, and the notice shall be published in the next available issue of the Illinois Register. The Secretary of State shall refuse to accept for filing a certified copy of the proposed rule, amendment, or repealer under the provisions of Section 5-65.
- g) If an agency refuses to modify or withdraw the proposed rule, amendment, or repealer to remedy an objection stated by the Joint Committee, it shall notify the Joint Committee in writing of its refusal and shall submit a notice of refusal to the Secretary of State. The notice shall be published in the next available issue of the Illinois Register. If the Joint Committee decides to recommend legislative action in response to an agency refusal, then the Joint Committee shall have drafted and introduced into either house of the General Assembly appropriate legislation to implement the recommendations of the Joint Committee.
- h) No rule, amendment, or repeal of a rule shall be accepted by the Secretary of State for filing under Section 5-65, if the rulemaking is subject to this Section, until after the agency has responded to the objections of the Joint Committee as provided in this Section.

Section 5-115 Other action by the Joint Committee

- a) If the Joint Committee determines that the adoption and effectiveness of a proposed rule, amendment, or repealer or portion of a proposed rule, amendment, or repealer by an agency would be objectionable under any of the standards for the Joint Committee's review specified in Section 5-100, 5-105, 5-110, 5-120, or 5-130 and would constitute a serious threat to the public interest, safety, or welfare, the Joint Committee may issue a statement to that effect at any time before the proposed rule, amendment, or repealer takes effect. The statement may be issued by the Joint Committee only upon the affirmative vote of three-fifths of the members appointed to the Joint Committee. A certified copy of the statement shall be transmitted to the proposing agency and to the Secretary of State for publication in the next available issue of the Illinois Register.
- b) The proposed rule, amendment, or repealer or the portion of the proposed rule, amendment, or repealer to which the Joint Committee has issued a statement under subsection (a) shall not be accepted for filing by the Secretary of State nor take effect for at least 180 days after receipt of the statement by the Secretary of State. The agency may not enforce or invoke for any reason a proposed rule,

amendment, or repealer or any portion thereof that is prohibited from being filed by this subsection during this 180 day period.

- c) The Joint Committee shall, as soon as practicable after the issuance of a statement under subsection (a), introduce in either house of the General Assembly a joint resolution stating that the General Assembly desires to continue the prohibition against the proposed rule, amendment, or repealer or the portion thereof to which the statement was issued being filed and taking effect. The joint resolution shall, immediately following its first reading, be placed on the calendar for consideration in each house of the General Assembly without reference to a standing committee.

If the joint resolution is passed by both houses of the General Assembly within the 180 day period provided in subsection (b), the agency shall be prohibited from filing the proposed rule, amendment, or repealer or the portion thereof and the proposed rule, amendment, or repealer or the portion thereof shall not take effect. The Secretary of State shall not accept for filing the proposed rule, amendment, or repealer or the portion thereof that the General Assembly has prohibited the agency from filing as provided in this subsection. If the 180 day period provided in subsection (b) expires before passage of the joint resolution, the agency may file the proposed rule, amendment, or repealer or the portion thereof as adopted and it shall take effect.

Section 5-120 Responsibilities of the Joint Committee with respect to emergency, peremptory, and other existing rules

- a) The Joint Committee may examine any rule to determine whether the rule is within the statutory authority upon which it is based and whether the rule is in proper form.
- b) If the Joint Committee objects to a rule, it shall, within 5 days of the objection, certify the fact to the adopting agency and include within the certification a statement of its specific objections.
- c) Within 90 days after receiving the certification, the agency shall do one of the following:
 - 1) Notify the Joint Committee that it has elected to amend the rule to meet the Joint Committee's objection.
 - 2) Notify the Joint Committee that it has elected to repeal the rule.
 - 3) Notify the Joint Committee that it refuses to amend or repeal the rule.
- d) If the agency elects to amend a rule to meet the Joint Committee's objections, it shall notify the Joint Committee in writing and shall initiate rulemaking procedures for that purpose by giving notice as required by Section 5-35. The Joint Committee shall give priority to rules so amended when setting its agenda.
- e) If the agency elects to repeal a rule as a result of the Joint Committee's objections, it shall notify the Joint Committee in writing of its election and shall initiate rulemaking procedures for that purpose by giving notice as required by Section 5-35.

- f) If the agency elects to amend or repeal a rule as a result of the Joint Committee's objections, it shall complete the process within 180 days after giving notice in the Illinois Register.
- g) Failure of the agency to respond to the Joint Committee's objections to a rule within the time prescribed in subsection (c) shall constitute a refusal to amend or repeal the rule.
- h) If an agency refuses to amend or repeal a rule to remedy an objection stated by the Joint Committee, it shall notify the Joint Committee in writing of its refusal and shall submit a notice of refusal to the Secretary of State. The notice shall be published in the next available issue of the Illinois Register. If the Joint Committee, in response to an agency refusal, decides to recommend legislative action, then the Joint Committee shall have drafted and introduced into either house of the General Assembly appropriate legislation to implement the recommendations of the Joint Committee.

Section 5-125 Other Joint Committee action with respect to emergency or preemptory rulemaking

- a) If the Joint Committee determines that a rule or portion of a rule adopted under Section 5-45 or 5-50 is objectionable under any of the standards for the Joint Committee's review specified in Section 5-100, 5-105, 5-110, 5-120, or 5-130 and constitutes a serious threat to the public interest, safety, or welfare, the Joint Committee may issue a statement to that effect. The statement may be issued by the Joint Committee only upon the affirmative vote of three-fifths of the members appointed to the Joint Committee. A certified copy of the statement shall be transmitted to the affected agency and to the Secretary of State for publication in the next available issue of the Illinois Register. Within 30 days of transmittal of the statement to the agency, the agency shall notify the Joint Committee in writing whether it has elected to repeal or amend the rule. Failure of the agency to notify the Joint Committee and Secretary of State within 30 days constitutes a decision by the agency to not repeal the rule.
- b) The effectiveness of the rule or the portion of a rule shall be suspended immediately for at least 180 days upon receipt of the certified statement by the Secretary of State. The Secretary of State shall indicate the suspension prominently and clearly on the face of the affected rule or the portion of a rule filed in the Office of the Secretary of State. Rules or portions of rules suspended under this subsection shall become effective again upon the expiration of 180 days from receipt of the statement by the Secretary of State if the General Assembly does not continue the suspension under subsection (c). The agency may not enforce, or invoke for any reason, a rule or portion of a rule that has been suspended under this subsection. During the 180 day period, the agency may not file, nor may the Secretary of State accept for filing, any rule having substantially the same purpose and effect as rules or portions of rules suspended under this subsection.

- c) The Joint Committee shall, as soon as practicable after the issuance of a statement under subsection (a), cause to be introduced in either house of the General Assembly a joint resolution stating that the General Assembly desires to continue the suspension of effectiveness of a rule or the portion of the rule to which the statement was issued. The joint resolution shall immediately following its first reading be placed on the calendar for consideration in each house of the General Assembly without reference to a standing committee. If the joint resolution is passed by both houses of the General Assembly within the 180 day period provided in subsection (b), the rule or the portion of the rule shall be considered repealed and the Secretary of State shall immediately remove the rule or portion of a rule from the collection of effective rules.

Section 5-130 Periodic review of existing rules

- a) The Joint Committee shall evaluate the rules of each agency at least once every 5 years. The Joint Committee by rule shall develop a schedule for this periodic evaluation. In developing this schedule the Joint Committee shall group rules by specified areas to assure the evaluation of similar rules at the same time. The schedule shall include at least the following categories:
 - 1) Human resources.
 - 2) Law enforcement.
 - 3) Energy.
 - 4) Environment.
 - 5) Natural resources.
 - 6) Transportation.
 - 7) Public utilities.
 - 8) Consumer protection.
 - 9) Licensing laws.
 - 10) Regulation of occupations.
 - 11) Labor laws.
 - 12) Business regulation.
 - 13) Financial institutions.
 - 14) Government purchasing.
- b) When evaluating rules under this Section, the Joint Committee's review shall include an examination of the following:
 - 1) Organizational, structural, and procedural reforms that affect rules or rulemaking.
 - 2) Merger, modification, establishment, or abolition of regulations.
 - 3) Eliminating or phasing out outdated, overlapping, or conflicting regulatory jurisdictions or requirements of general applicability.
 - 4) Economic and budgetary effects.

Section 5-135 Administration of Act

The Joint Committee may adopt rules to administer the provisions of this Act relating to the Joint Committee's responsibilities, powers, and duties under this Article 5.

Section 5-140 Reports to the General Assembly

The Joint Committee shall report its findings, conclusions, and recommendations, including suggested legislation, to the General Assembly by February 1 of each year.

The requirement for reporting to the General Assembly shall be satisfied by filing copies of the report with the Speaker, the Minority Leader, and the Clerk of the House of Representatives, the President, the Minority Leader, and the Secretary of the Senate, and the Legislative Research Unit, as required by Section 3.1 of the General Assembly Organization Act, and filing additional copies with the State Government Report Distribution Center for the General Assembly as required under paragraph (t) of Section 7 of the State Library Act.

Section 5-145 Request for adoption of rules

- a) An agency shall, in accordance with Section 5-35, adopt rules that implement recently enacted legislation of the General Assembly in a timely and expeditious manner.
- b) Any interested person may request an agency to adopt, amend, or repeal a rule. Each agency shall prescribe by rule the procedure for consideration and disposition of the person's request. If, within 30 days after submission of a request, the agency has not initiated rulemaking proceedings in accordance with Section 5-35, the request shall be deemed to have been denied.

Section 5-150 Declaratory rulings

- a) Requests for rulings. Each agency may in its discretion provide by rule for the filing and prompt disposition of petitions or requests for declaratory rulings as to the applicability to the person presenting the petition or request of any statutory provision enforced by the agency or of any rule of the agency. Declaratory rulings shall not be appealable. The agency shall maintain as a public record in the agency's principal office and make available for public inspection and copying any such rulings. The agency shall delete trade secrets or other confidential information from the ruling before making it available.
- b) Overlapping regulations.
 - 1) Any persons subject to a rule imposed by a State agency and to a similar rule imposed by the federal government may petition the agency administering the State rule for a declaratory ruling as to whether compliance with the federal rule will be accepted as compliance with the State rule.
 - 2) If the agency determines that compliance with the federal rule would not satisfy the purposes or relevant provisions of the State law involved, the

- agency shall so inform the petitioner in writing, stating the reasons for the determination, and may issue a declaratory ruling to that effect.
- 3) If the agency determines that compliance with the federal rule would satisfy the purposes and relevant provisions of the State law involved but that it would not satisfy the relevant provisions of the State rule involved, the agency shall so inform the petitioner and the Joint Committee on Administrative Rules, and the agency may initiate a rulemaking proceeding in accordance with Section 5-35 to consider revising the rule to accept compliance with the federal rule in a manner that is consistent with the purposes and relevant provisions of the State law.
 - 4) If the agency determines that compliance with the federal rule would satisfy the purposes and relevant provisions of the State law and the State rule involved, the agency shall issue a declaratory ruling indicating its intention to accept compliance with the federal rule as compliance with the State rule and the terms and conditions under which it intends to do so.

Section 5-155 References to this Act

After the effective date of this amendatory Act of 1991, when rules contain references to Sections of this Act as they were numbered before the effective date of this amendatory Act of 1991, agencies shall within one year amend those rules to change the references to the Section numbers created by this amendatory Act of 1991. The amendment may be adopted by filing with the Secretary of State for publication in the Illinois Register a notice that lists the precise regulatory citations of the obsolete statutory references that are being revised and the new citation for each. Upon filing a notice, the agency shall also certify to the Secretary of State a copy of each rule that contains an amended citation for the Illinois Administrative Code. All such certified rules shall be adopted and effective immediately upon filing.

Section 5-160 Certain provisions of the Illinois Public Aid Code control over provisions of this Act

In the event that any provisions of this Act are in conflict with the provisions of Section 4-2 of the Illinois Public Aid Code, the provisions of Section 4-2 of the Illinois Public Aid Code shall control.

ARTICLE 10. ADMINISTRATIVE HEARINGS

Section 10-5 Rules required for hearings

All agencies shall adopt rules establishing procedures for contested case hearings.

Section 10-10 Components of rules

All agency rules establishing procedures for contested cases shall at a minimum comply with the provisions of this Article 10. In addition, agency rules establishing procedures may include, but

need not be limited to, the following components: pre-hearing conferences, representation interview or deposition procedures, default procedures, selection of administrative law judges, the form of the final order, the standard of proof used, which agency official makes the final decision, representation of parties, subpoena request procedures, discovery and protective order procedures, and any review or appeal process within the agency.

Section 10-15 Standard of proof

Unless otherwise provided by law or stated in the agency's rules, the standard of proof in any contested case hearing conducted under this Act by an agency shall be the preponderance of the evidence.

Section 10-20 Qualifications of administrative law judges

All agencies shall adopt rules concerning the minimum qualifications of administrative law judges for contested case hearings. The agency head or an attorney licensed to practice law in Illinois may act as an administrative law judge or panel for an agency without adopting any rules under this Section. These rules may be adopted using the procedures in either Section 5-15 or 5-35.

Section 10-25 Contested cases; notice; hearing

- a) In a contested case, all parties shall be afforded an opportunity for a hearing after reasonable notice. The notice shall be served personally or by certified or registered mail or as otherwise provided by law upon the parties or their agents appointed to receive service of process and shall include the following:
 - 1) A statement of the time, place, and nature of the hearing.
 - 2) A statement of the legal authority and jurisdiction under which the hearing is to be held.
 - 3) A reference to the particular Sections of the substantive and procedural statutes and rules involved.
 - 4) Except where a more detailed statement is otherwise provided for by law, a short and plain statement of the matters asserted, the consequences of a failure to respond, and the official file or other reference number.
 - 5) The names and mailing addresses of the administrative law judge, all parties, and all other persons to whom the agency gives notice of the hearing unless otherwise confidential by law.
- b) An opportunity shall be afforded all parties to be represented by legal counsel and to respond and present evidence and argument.
- c) Unless precluded by law, disposition may be made of any contested case by stipulation, agreed settlement, consent order, or default.

Section 10-30 Disqualification of administrative law judge

- a) The agency head, one or more members of the agency head, or any other person meeting the qualifications set forth by rule under Section 10-20 may be the administrative law judge.
- b) The agency shall provide by rule for disqualification of an administrative law judge for bias or conflict of interest. An adverse ruling, in and of itself, shall not constitute bias or conflict of interest.

Section 10-35 Record in contested cases

- a) The record in a contested case shall include the following:
 - 1) All pleadings (including all notices and responses thereto), motions, and rulings.
 - 2) All evidence received.
 - 3) A statement of matters officially noticed.
 - 4) Any offers of proof, objections, and rulings thereon.
 - 5) Any proposed findings and exceptions.
 - 6) Any decision, opinion, or report by the administrative law judge.
 - 7) All staff memoranda or data submitted to the administrative law judge or members of the agency in connection with their consideration of the case that are inconsistent with Section 10-60.
 - 8) Any communication prohibited by Section 10-60.

No such communication shall form the basis for any finding of fact.
- b) Oral proceedings or any part thereof shall be recorded stenographically or by other means that will adequately insure the preservation of the testimony or oral proceedings and shall be transcribed on the request of any party.
- c) Findings of fact shall be based exclusively on the evidence and on matters officially noticed.

Section 10-40 Rules of evidence; official notice

In contested cases:

- a) Irrelevant, immaterial, or unduly repetitious evidence shall be excluded. The rules of evidence and privilege as applied in civil cases in the circuit courts of this State shall be followed. Evidence not admissible under those rules of evidence may be admitted, however, (except where precluded by statute) if it is of a type commonly relied upon by reasonably prudent men in the conduct of their affairs. Objections to evidentiary offers may be made and shall be noted in the record. Subject to these requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced, any part of the evidence may be received in written form.
- b) Subject to the evidentiary requirements of subsection (a) of this Section a party may conduct cross-examination required for a full and fair disclosure of the facts.
- c) Notice may be taken of matters of which the circuit courts of this State may take judicial notice. In addition, notice may be taken of generally recognized technical or scientific facts within the agency's specialized knowledge. Parties shall be

notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material noticed, including any staff memoranda or data, and they shall be afforded an opportunity to contest the material so noticed. The agency's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence.

Section 10-45 Proposal for decision

Except where otherwise expressly provided by law, when in a contested case a majority of the officials of the agency who are to render the final decision has not heard the case or read the record, the decision, if adverse to a party to the proceeding other than the agency, shall not be made until a proposal for decision is served upon the parties and an opportunity is afforded to each party adversely affected to file exceptions and to present a brief and, if the agency so permits, oral argument to the agency officials who are to render the decision. The proposal for decision shall contain a statement of the reasons therefor and of each issue of fact or law necessary to the proposed decision and shall be prepared by the persons who conducted the hearing or one who has read the record.

Section 10-50 Decisions and orders

- a) A final decision or order adverse to a party (other than the agency) in a contested case shall be in writing or stated in the record. A final decision shall include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. If, in accordance with agency rules, a party submitted proposed findings of fact, the decision shall include a ruling upon each proposed finding. Parties or their agents appointed to receive service of process shall be notified either personally or by registered or certified mail of any decision or order. Upon request a copy of the decision or order shall be delivered or mailed forthwith to each party and to his attorney of record.
- b) All agency orders shall specify whether they are final and subject to the Administrative Review Law.
- c) A decision by any agency in a contested case under this Act shall be void unless the proceedings are conducted in compliance with the provisions of this Act relating to contested cases, except to the extent those provisions are waived under Section 10-70 and except to the extent the agency has adopted its own rules for contested cases as authorized in Section 1-5.

Section 10-55 Expenses and attorney's fees

- a) In any contested case initiated by any agency that does not proceed to court for judicial review and on any issue where a court does not have jurisdiction to make an award of litigation expenses under Section 2-611 of the Civil Practice Law, any allegation made by the agency without reasonable cause and found to be

untrue shall subject the agency making the allegation to the payment of the reasonable expenses, including reasonable attorney's fees, actually incurred in defending against that allegation by the party against whom the case was initiated. A claimant may not recover litigation expenses when the parties have executed a settlement agreement that, while not stipulating liability or violation, requires the claimant to take correction action or pay a monetary sum.

- b) The claimant shall make a demand for litigation expenses to the agency. If the claimant is dissatisfied because of the agency's failure to make any award or because of the insufficiency of the agency's award, the claimant may petition the Court of Claims for the amount deemed owed. If allowed any recovery by the Court of Claims, the claimant shall also be entitled to reasonable attorney's fees and the reasonable expenses incurred in making a claim for the expenses incurred in the administrative action. The Court of Claims may reduce the amount of the litigation expenses to be awarded under this Section, or deny an award, to the extent that the claimant engaged in conduct during the course of the proceeding that unduly and unreasonably protracted the final resolution of the matter in controversy.
- c) In any case in which a party has any administrative rule invalidated by a court for any reason, including but not limited to the agency's exceeding its statutory authority or the agency's failure to follow statutory procedures in the adoption of the rule, the court shall award the party bringing the action the reasonable expenses of the litigation, including reasonable attorney's fees.

Section 10-60 Ex parte communications

- a) Except in the disposition of matters that agencies are authorized by law to entertain or dispose of on an ex parte basis, agency heads, agency employees, and administrative law judges shall not, after notice of hearing in a contested case or licensing to which the procedures of a contested case apply under this Act, communicate, directly or indirectly, in connection with any issue of fact, with any person or party, or in connection with any other issue with any party or the representative of any party, except upon notice and opportunity for all parties to participate.
- b) However, an agency member may communicate with other members of the agency, and an agency member or administrative law judge may have the aid and advice of one or more personal assistants.
- c) An ex parte communication received by any agency head, agency employee, or administrative law judge shall be made a part of the record of the pending matter, including all written communications, all written responses to the communications, and a memorandum stating the substance of all oral communications and all responses made and the identity of each person from whom the ex parte communication was received.
- d) Communications regarding matters of procedure and practice, such as the format of pleadings, number of copies required, manner of service, and status of proceedings, are not considered ex parte communications under this Section.

Section 10-65 Licenses

- a) When any licensing is required by law to be preceded by notice and an opportunity for a hearing, the provisions of this Act concerning contested cases shall apply.
- b) When a licensee has made timely and sufficient application for the renewal of a license or a new license with reference to any activity of a continuing nature, the existing license shall continue in full force and effect until the final agency decision on the application has been made unless a later date is fixed by order of a reviewing court.
- c) An application for the renewal of a license or a new license shall include the applicant's social security number. Each agency shall require the licensee to certify on the application form, under penalty of perjury, that he or she is not more than 30 days delinquent in complying with a child support order. Every application shall state that failure to so certify shall result in disciplinary action, and that making a false statement may subject the licensee to contempt of court. The agency shall notify each applicant or licensee who acknowledges a delinquency or who, contrary to his or her certification, is found to be delinquent or who after receiving notice, fails to comply with a subpoena or warrant relating to a paternity or a child support proceeding, that the agency intends to take disciplinary action. Accordingly, the agency shall provide written notice of the facts or conduct upon which the agency will rely to support its proposed action and the applicant or licensee shall be given an opportunity for a hearing in accordance with the provisions of the Act concerning contested cases. Any delinquency in complying with a child support order can be remedied by arranging for payment of past due and current support. Any failure to comply with a subpoena or warrant relating to a paternity or child support proceeding can be remedied by complying with the subpoena or warrant. Upon a final finding of delinquency or failure to comply with a subpoena or warrant, the agency shall suspend, revoke, or refuse to issue or renew the license. In cases in which the Department of Public Aid has previously determined that an applicant or a licensee is more than 30 days delinquent in the payment of child support and has subsequently certified the delinquency to the licensing agency, and in cases in which a court has previously determined that an applicant or licensee has been in violation of the Non-Support Punishment Act for more than 60 days, the licensing agency shall refuse to issue or renew or shall revoke or suspend that person's license based solely upon the certification of delinquency made by the Department of Public Aid or the certification of violation made by the court. Further process, hearings, or redetermination of the delinquency or violation by the licensing agency shall not be required. The licensing agency may issue or renew a license if the licensee has arranged for payment of past and current child support obligations in a manner satisfactory to the Department of Public Aid or the court. The licensing agency may impose conditions, restrictions, or disciplinary action upon that license.

- d) Except as provided in subsection (c), no agency shall revoke, suspend, annul, withdraw, amend materially, or refuse to renew any valid license without first giving written notice to the licensee of the facts or conduct upon which the agency will rely to support its proposed action and an opportunity for a hearing in accordance with the provisions of this Act concerning contested cases. At the hearing, the licensee shall have the right to show compliance with all lawful requirements for the retention, continuation, or renewal of the license. If, however, the agency finds that the public interest, safety, or welfare imperatively requires emergency action, and if the agency incorporates a finding to that effect in its order, summary suspension of a license may be ordered pending proceedings for revocation or other action. Those proceedings shall be promptly instituted and determined.
- e) Any application for renewal of a license that contains required and relevant information, data, material, or circumstances that were not contained in an application for the existing license shall be subject to the provisions of subsection (a).

Section 10-70 Waiver

Compliance with any or all of the provisions of this Act concerning contested cases may be waived by written stipulation of all parties.

ARTICLE 15. SEVERABILITY AND EFFECTIVE DATE

Section 15-5 Severability

If any provision of this Act or the application of any provision of this Act to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act that can be given effect without the invalid provision or application, and for this purpose the provisions of this Act are severable.

Section 15-10 Effective date

This Act takes effect upon becoming law.

Available on our website at: www.legis.state.il.us/commission/jcar/default.htm

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